

State of Iowa

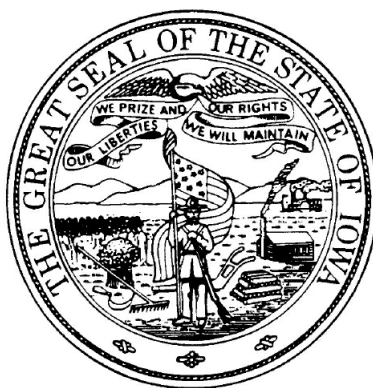
Iowa

Administrative

Code

Supplement

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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Chief Information Officer, Office of the[129]

Insert Analysis

Insert Chapters 1 to 6

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Replace Analysis

Replace Chapter 115

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Replace Analysis

Replace Chapter 80

Replace Chapter 126

Secretary of State[721]

Replace Analysis

Replace Reserved Chapter 6 with Chapter 6

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[Created by 2013 Iowa Acts, chapter 129]

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TITLE I
GENERAL OFFICE PROCEDURES
CHAPTER 1
OFFICE ORGANIZATION

129—1.1(8B,17A) Creation and mission. The office of the chief information officer is established in Iowa Code chapter 8B. The office leads, directs, manages, coordinates, and provides accountability for the information technology resources of state government and coordinates statewide broadband availability and access.

The mission of the office is to provide high-quality, customer-focused information technology services and business solutions to government and to the citizens of the state of Iowa.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—1.2(8B,17A) Location. The office's primary headquarters is located in the Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The office's Web site, available at www.ocio.iowa.gov, provides information about the office's organization and services.

1.2(1) The information security office is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(2) The infrastructure services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(3) The business services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(4) The enterprise applications division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(5) The application development division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(6) The project management office is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

1.2(7) The agency services division is located in the Hoover State Office Building, Level B-South, 1305 East Walnut Street, Des Moines, Iowa 50319; telephone (515)281-5503. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—1.3(8B,17A) Office head. The head of the office is the state chief information officer, who is appointed by the governor with the approval of two-thirds of the members of the senate. The CIO serves at the pleasure of the governor.

The CIO has the statutory authority to designate an employee of the office to carry out the powers and duties of the CIO in the absence of the CIO or due to the inability of the CIO to do so.

Specific powers and duties of the office, the CIO, and the office's employees and agents are set forth in Iowa Code chapters 8B and 17A and these administrative rules.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—1.4(8B,17A) Administration of office. In order to carry out the functions of the office, the following enterprises and divisions have been established:

1.4(1) CIO's office. The CIO is the head of the office. The CIO's central administration area provides support to the CIO and to the governmental and business operations of the office and its enterprises.

The following functions are included in this area: general counsel; strategic, performance and business continuity planning; program oversight and accountability; and departmental and enterprise policy and standards development.

1.4(2) *Information security office.* The information security office is responsible for developing, implementing and maintaining information security policies, standards, and practices for state government that enhance the confidentiality, integrity and availability of computer systems and electronic data resources and for ensuring enterprisewide compliance with security requirements. This office includes the state chief information security officer.

1.4(3) *Infrastructure services.* The infrastructure services division is responsible for infrastructure technology management and operations support throughout state government, including the management and administration of information technology (IT) assets such as data centers, servers, mainframes, networks, storage, desktops, mobile devices, and related infrastructure components.

1.4(4) *Business services.* The business services division is responsible for procurement, contracting, vendor management, financial management, brokerage services, and related business support activities of the office.

1.4(5) *Enterprise applications.* The enterprise applications division is responsible for support, configuration, and customization of commercial off-the-shelf applications, software-as-a-service applications, geospatial services, enterprise content management services, and related vendor business applications used throughout state government.

1.4(6) *Application development.* The application development division is responsible for software application, development, maintenance, and training and for providing advice and assistance in developing and supporting business applications throughout state government.

1.4(7) *Project management.* The project management office is responsible for the oversight, coordination, and tracking of IT projects throughout state government.

1.4(8) *Agency services.* The agency services division is responsible for customer IT service management throughout state government, including IT financial planning and budget support, customer liaison services, agency IT strategic planning, advisory services related to IT expenditures, and related services.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—1.5(8B,17A) Definitions. As used in these rules, unless specified elsewhere:

“*Chief information officer*” or “*CIO*” means the state chief information officer.

“*Office*” or “*OCIO*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapter 8B and section 17A.3.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 2 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

129—2.1(8B,17A,22) Definitions. As used in this chapter:

“Chief information officer” or *“CIO”* means the state chief information officer.

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the office is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the office, the CIO, or another person lawfully delegated authority by the office to act for the office in implementing Iowa Code chapter 22.

“Office” or *“OCIO,”* unless the context otherwise requires, means the office of the chief information officer authorized by Iowa Code chapter 8B.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the office.

“Record system” means any group of records under the control of the office from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.2(8B,17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound determinations by the office with respect to the handling of confidential records and the implementation of the Iowa fair information practices Act. This office is committed to the policies set forth in Iowa Code chapter 22; office staff shall cooperate with members of the public in implementing the provisions of that chapter.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.3(8B,17A,22) Requests for access to records.

2.3(1) Location of record. A request for access to a record under the jurisdiction of the OCIO shall be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The OCIO shall forward the request appropriately. If a request for access to a record is misdirected, office personnel will forward the request to the appropriate person within the office.

2.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

2.3(3) Request for access. Requests for access to open records may be made in writing, in person, by e-mail or other electronic means, or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the office’s response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

2.3(4) Response to requests. The custodian of records under the jurisdiction of the office is authorized to grant or deny access to a record according to the provisions of this chapter and directions from the office. The decision to grant or deny access may be delegated to one or more designated employees.

a. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

b. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 129—2.4(8B,17A,22) in this chapter and other applicable provisions of law.

2.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from office files. Examination and copying of office records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

2.3(6) *Copying.* A reasonable number of copies of an open record may be made in the office of the OCIO. If photocopy equipment is not available in the offices of the OCIO where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

2.3(7) *Fees.*

a. When charged. The office may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the OCIO shall be prominently posted in the offices of the OCIO. Copies of records may be made by or for members of the public on office photocopy machines or from electronic storage systems at cost as determined and posted in the offices of the OCIO by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual office expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in the offices of the OCIO the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an office clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee. Upon completion, the actual fee will be calculated and the difference refunded or collected.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

2.3(8) *Records held for others.* Requests for records the office holds solely in storage for or as the agent of another public body are not within the jurisdiction of the office and shall be directed to the owner of the records.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.4(8B,17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the

examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 129—2.3(8B,17A,22).

2.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

2.4(2) *Requests.* The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

2.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

2.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.5(8B,17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

2.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

2.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the office by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

2.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the office does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

2.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

2.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

2.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.6(8B,17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester and shall include the current address and telephone number of the requester or the requester's representative.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.7(8B,17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Additional requirements may be necessary for special classes of records.

Appearance of counsel before the office on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the office to disclose records about that person to the person's attorney.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.8(8B,17A,22) Disclosures without the consent of the subject.

2.8(1) Open records are routinely disclosed without the consent of the subject.

2.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 129—2.9(8B,17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the office with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the office specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.9(8B,17A,22) Routine use.

2.9(1) "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.9(2) To the extent allowed by law, the following uses are considered routine uses of all office records:

a. Disclosure to those officers, employees, and agents of the office who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes a legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the office.

d. Transfers of information within the office, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the office is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

g. Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlements filed in contested case proceedings before the office.

h. Transmittal to the district court of the record in a contested case before the office, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.10(8B,17A,22) Consensual disclosure of confidential records.

2.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to the office's disclosure of confidential records as provided in rule 129—2.7(8B,17A,22).

2.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the office may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.11(8B,17A,22) Release to subject.

2.11(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 129—2.6(8B,17A,22). However, the office need not release the following records to the subject:

a. The identity of a person providing information to the office need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

d. As otherwise authorized by law.

2.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the office may take reasonable steps to protect confidential information relating to another subject.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.12(8B,17A,22) Availability of records.

2.12(1) *General.* Office records are open for public inspection and copying unless otherwise provided by rule or law.

2.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. The office is a depository for the records of other public bodies. Records are maintained on paper, audiotape, and microform, and in electronic information storage and media systems. Although these records are in the physical possession of the office, the responsibility for compliance with Iowa Code chapter 22 remains with the "lawful custodian." The public body requesting creation or storage of the record by the office is the lawful custodian (see Iowa Code section 22.1, definition of "lawful custodian"). All such records are confidentially maintained while in the possession of the office. Requests for access to any such records must be directed to the lawful custodian. In the event the office receives a request for access to any such records, the office may, in its discretion, direct the person making such a request to the lawful custodian of the subject records, or forward such request to the lawful custodian of the subject records. Additionally, any records maintained by the office concerning the content, location, or disposition of such records are confidential in order to maintain security for access to confidential records pursuant to Iowa Code section 22.7.

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

d. Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract by the appropriate procurement authority. (11—subrule 117.19(3), Iowa Administrative Code)

e. Tax records made available to the office. (Iowa Code sections 422.20 and 422.72)

f. Minutes or audio recordings of closed meetings of a government body. (Iowa Code section 21.5(4))

g. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e."

h. Those portions of office staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by office staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances of criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the office. (Iowa Code sections 17A.2(11) “*f*” and 17A.3(1) “*d*”)

i. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

j. Computer resource security files containing names, identifiers, and passwords of users of computer resources. Such files must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7. (Iowa Code section 22.7(50))

k. Data or information collected for the purpose of assessing, analyzing, measuring, preparing for, or responding to suspected, potential, or actual information security threats. (Iowa Code section 22.7(50))

l. Data or information collected for the purpose of assessing, analyzing, or classifying the severity of, nature of, ability to remediate, or ability to migrate data. (Iowa Code section 22.7(50))

m. Detailed security audit information. Such information includes but is not limited to security assessment reports; information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of the office. (Iowa Code section 22.7(50))

n. Information security data, information security proposals, or information security assessments compiled, prepared, or developed by a governmental body, or compiled, prepared, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.7(50))

o. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.3A(2) “*a*”)

p. Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to the disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

q. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

r. Any other records made confidential by law.

2.12(3) Authority to release confidential records. The office may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 129—2.4(8B,17A,22). If the office initially determines that it will release such records, the office may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.13(8B,17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the office by personal identifier in record systems as defined in rule 129—2.1(8B,17A,22). Unless otherwise stated, the authority to maintain the record is provided by Iowa Code chapter 8B.

2.13(1) Retrieval. Personal identifiers may be used to retrieve information from any of the systems of records that the office maintains that contain personally identifiable information.

2.13(2) Means of storage. Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

2.13(3) Comparison. Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

2.13(4) Comparison with data from outside the office. Personally identifiable information in systems of records maintained by the office is retrievable through the use of personal identifiers and may be compared with information from outside the office when specified by law.

2.13(5) Nature and extent. All of the record systems listed in subrule 2.13(6) contain personally identifiable information concerning matters such as income and social security numbers.

2.13(6) Record systems with personally identifiable retrieval. The office maintains other public bodies' systems or records that contain personally identifiable and confidential information. The legal authority for the collection of the information is with the public body of record for that system. The following record systems contain personally identifiable information:

a. Personnel files. The office maintains files containing information about employees and applicants for positions with the office. The files include payroll records, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

b. Telephone directory of state employees. The office maintains a telephone directory of state employees. The directory contains names, department names, business addresses and telephone numbers. The publication also includes private industry information and advertising containing business names, addresses and telephone numbers. This record is stored on both paper and electronically.

c. Contracts. These are records pertaining to training, consultants, and other services. These records are collected in accordance with Iowa Code chapter 8B, and portions are confidential records under Iowa Code section 22.7.

These records contain names, social security numbers, and other identifying numbers and are collected in the form of paper, microfilm, tape, and electronic records. Electronic records permit the comparison of personally identifiable information in one record system with that in another system.

d. Vendor files. The office maintains files of vendors eligible to do business with the state of Iowa. Files may contain applications, vendor information booklets, vendor codes, commodity codes, minority-owned vendor identification information, and mailing lists. Records are stored on paper and electronically.

e. Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing to obtain copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.14(8B,17A,22) Other groups of records. This rule describes groups of records maintained by the office other than record systems as defined in rule 129—2.1(8B,17A,22). These records are routinely available to the public. However, the office's files of these records may contain confidential information. In addition, the records listed in rule 129—2.13(8B,17A,22) may contain information about individuals. All records are stored on paper and in automated data processing systems unless otherwise noted.

2.14(1) Rule-making records. Rule-making records are official documents executed during the promulgation of office rules and public comments. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may be found on the office's Web site.

2.14(2) Rule-making initiatives. The office maintains both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9 signed September 14, 1999.

2.14(3) Board and commission records. Agendas, minutes, and materials presented to boards and commissions within the office are available from the office except those records which concern closed sessions and are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may contain information about individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records may also be stored on audiotapes. This information is not stored in an automated data processing system, although minutes and other information may be found on the office's Web site.

2.14(4) Publications. News releases, annual reports, project reports, office newsletters, and other publications are available from the office. Office news releases, project reports, and newsletters may contain information about individuals, including office staff or members of office councils or committees. This information is not stored in an automated data processing system, although some office publications may be found on the office's Web site.

2.14(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 129—2.5(8B,17A,22) or subrule 2.12(2). These records, collected under the authority of Iowa Code chapter 8B, may contain confidential information about individuals.

2.14(6) Published materials or manuals. The office uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright laws.

2.14(7) Mailing lists and contact lists. The office maintains lists including names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public. These lists may be used for distribution of informational material, such as newsletters, policy directives, or educational bulletins. These lists are also used to provide contacts for coordination of services or as reference information sources.

2.14(8) Authorized user lists. The office maintains a list of persons authorized to use the office's online services.

2.14(9) Bid/purchasing process. The office maintains records of specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, printing orders, supply orders, and correspondence.

2.14(10) Project files. The office maintains plans, specifications, contracts, studies, drawings, photos, requests for services, lease/rental files, 28E agreements, and facilities records.

2.14(11) Property/equipment files. The office maintains records of inventory, assignments, distribution, maintenance, requests, operations, shipping/receiving reports, and adjustments.

2.14(12) Data processing files. Data processing files include operations logs, database user requests, job number maintenance/updates, data entry format books, integrated data dictionaries, computer output form designations, system software, hardware/software configurations, problem determination/resolution records, and incident reports.

2.14(13) Administrative records. Administrative records include, but are not limited to, the following:

- a. Reports: weekly, monthly, annual, biennial, statistical, analysis, activity.
- b. Correspondence: public, interagency, internal.
- c. Policies and procedures.
- d. Organizational charts or tables of authorized positions.
- e. Memberships: professional/technical organizations.

- f.* Budget and financial records.
- g.* Accounting records: accounts receivable, accounts payable, receipts, invoices, claims, vouchers, office billings.
- h.* Requisitions of equipment and supplies.
- i.* Time sheets.
- j.* Purchasing documents and records.

2.14(14) Legislative files. Legislative files include pending bills, enrolled bills, legislative proposals, and copies of amendments.

2.14(15) Printing files. Printing files include print requisitions, plates, negatives, samples, typesetting, artwork, and production logs.

2.14(16) Waivers and variances. Requests for waivers and variances, office proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others.

2.14(17) General correspondence, reciprocity agreements with other states, and cooperative agreements and memorandums of understanding with other agencies.

2.14(18) All other records. Records are open if not exempted from disclosure by law.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.15(8B,17A,22) Data processing systems comparison. Some of the data processing systems used by the office permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.16(8B,17A,22) Applicability. This chapter does not:

1. Require the office to index or retrieve records which contain information about individuals by a person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the office which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the office in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the office.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—2.17(8B,17A,22) Notice to suppliers of information. When the office requests a person to supply information about that person, the office shall notify the person of the use that will be made of the information, which persons outside the office might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B, 17A, and 22.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 3 PETITIONS FOR RULE MAKING

129—3.1(17A) Petition for rule making.

3.1(1) Filing. Any person, other state agency, or board may file a petition for rule making with the office of the chief information officer at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the office. The office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the office an extra copy for this purpose.

3.1(2) Form. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter).	<div style="font-size: 3em; line-height: 1;">}</div> <div style="text-align: left; padding-top: 10px;"> PETITION FOR RULE MAKING </div>

3.1(3) Content. The petition must provide the following information:

a. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

b. A citation to any law deemed relevant to the office's authority to take the action urged or to the desirability of that action.

c. A brief summary of petitioner's arguments in support of the action urged in the petition.

d. A brief summary of any data supporting the action urged in the petition.

e. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

f. Any request by the petitioner for a meeting provided for by rule 129—3.4(17A).

3.1(4) Additional requirements. The petition must:

a. Be dated and signed by the petitioner or the petitioner's representative;

b. Include the name, mailing address, and telephone number of the petitioner and petitioner's representative; and

c. Include a statement indicating the person to whom communications concerning the petition should be directed.

3.1(5) Denial. The chief information officer (CIO) may deny a petition if it does not substantially conform to or comply with the above requirements relating to filing, form, content, or additional requirements.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—3.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The CIO, or the CIO's designee, may request a brief from the petitioner or from any other person concerning the substance of the petition.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—3.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—3.4(17A) Office consideration.

3.4(1) Within 14 days after the filing of a petition, the office must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules

review committee. Upon request by petitioner in the petition, the office must schedule a brief and informal meeting between the petitioner and the office to discuss the petition. The office may request the petitioner to submit additional information or argument concerning the petition. The office may also solicit comments from any person on the substance of the petition. Comments on the substance of the petition may also be submitted to the office by any person.

3.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the office must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or granting of the petition on the date when the office mails or delivers the required notification to the petitioner.

3.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the office's rejection of the petition.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 4 DECLARATORY ORDERS

129—4.1(8B,17A) Petition for declaratory order.

4.1(1) *Filing.* Any person may file a petition with the office for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the office of the chief information officer at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the office. The office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the office with an extra copy for this purpose.

4.1(2) *Form.* The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER		
Petition by (Name of Petitioner) for a Declaratory Order on (cite the provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

4.1(3) *Content.* The petition must provide the following information:

- a. A clear and concise statement of all relevant facts on which the order is requested.
- b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
- c. The questions the petitioner wants answered, stated clearly and concisely.
- d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
- e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
- f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.
- g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.
- h. Any request by petitioner for a meeting provided for by rule 129—4.7(8B,17A).

4.1(4) *Additional requirements.* The petition must:

- a. Be dated and signed by the petitioner or the petitioner's representative;
- b. Include the name, mailing address, and telephone number of the petitioner and petitioner's representative; and
- c. Include a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.2(8B,17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the office shall give notice of the petition to all persons not served by the petitioner pursuant to rule 129—4.6(8B,17A) to whom notice is required by any provision of law. The office may also give notice to any other persons.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.3(8B,17A) Intervention.

4.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

4.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the office.

4.3(3) Filing. A petition for intervention shall be filed at Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by the office. The office will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

4.3(4) Form. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

OFFICE OF THE CHIEF INFORMATION OFFICER	
Petition by (Name of Original Petitioner) for a Declaratory Order on (cite the provisions of law cited in the original petition).	} PETITION FOR INTERVENTION

4.3(5) Content. The petition for intervention must provide the following information:

- a. Facts supporting the intervenor's standing and qualifications for intervention.
- b. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
- c. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
- d. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
- e. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
- f. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

4.3(6) Additional requirements. The petition must:

- a. Be dated and signed by the intervenor or the intervenor's representative;
 - b. Include the name, mailing address, and telephone number of the intervenor and intervenor's representative; and
 - c. Include a statement indicating the person to whom communications should be directed.
- [ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.4(8B,17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The office may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.5(8B,17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.6(8B,17A) Service and filing of petitions and other papers.

4.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the office.

4.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 129—6.14(8B,17A).
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.7(8B,17A) Consideration. Upon request by petitioner, the office shall schedule a brief and informal meeting between the original petitioner, all intervenors, and the office to discuss the questions raised. The office may solicit comments from any person on the questions raised. Additionally, any person may submit comments on the questions raised to the office.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.8(8B,17A) Action on petition.

4.8(1) The office shall take action on a petition for a declaratory order within 30 days after its receipt as required by Iowa Code section 17A.9.

4.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 129—6.2(8B,17A).
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.9(8B,17A) Refusal to issue order.

4.9(1) The office shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially conform to or comply with the requirements set forth in rule 129—4.1(8B,17A) relating to filing, form, content, or additional requirements.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the office to issue an order.

c. The office does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other office or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an office decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests that the office determine whether a statute is unconstitutional on its face.

4.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final office action on the petition.

4.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.10(8B,17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of the petitioner, the name of any intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.11(8B,17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—4.12(8B,17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the office, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the office. The issuance of a declaratory order constitutes final office action on the petition.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 5 OFFICE PROCEDURE FOR RULE MAKING

129—5.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the office are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the office may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the office by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.3(17A) Public rule-making docket.

5.3(1) Docket maintained. The office shall maintain a current public rule-making docket.

5.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of a proposed rule is distributed for internal discussion within the office. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the office for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of office personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the office of that possible rule. The office may also include in the docket other subjects upon which public comment is desired.

5.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule’s becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any office determination with respect thereto;
- h. Any known timetable for office decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.4(17A) Notice of proposed rule making.

5.4(1) Contents. At least 35 days before the adoption of a rule, the office shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the office shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the office for the resolution of each of those issues.

5.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 5.12(2) of this chapter.

5.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the office a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the office shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the office for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. Inquiries regarding the subscription price should be directed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.5(17A) Public participation.

5.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action.

5.5(2) *Oral proceedings.* The office may, at any time, schedule an oral proceeding on a proposed rule. The office shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the office by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

- a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
- b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
- c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

5.5(3) *Conduct of oral proceedings.*

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” or this chapter.

b. *Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in

the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The CIO, a member of the office, or another person designated by the CIO who will be familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule. If the CIO does not preside, the presiding officer shall prepare a memorandum for consideration by the CIO summarizing the contents of the presentations made at the oral proceeding unless the CIO determines that such a memorandum is unnecessary because the CIO will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the CIO at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the office's decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the office.

(6) The presiding officer may continue the oral proceeding at a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

5.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the office may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

5.5(5) Accessibility. The office shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance to arrange access or other needed services.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.6(17A) Regulatory analysis.

5.6(1) Definition of small business. A “small business” is defined in Iowa Code section 17A.4A(8).

5.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the office's small business impact list by making a written application addressed to Small Business Registry,

c/o Business Services Division, Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. The address of the small business or organization of small businesses;
- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact;
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The office may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The office may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

5.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the office shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business and that was adopted in reliance upon Iowa Code section 17A.4(3), the office shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

5.6(4) *Qualified requesters for regulatory analysis—economic impact.* The office shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "a" after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

5.6(5) *Qualified requesters for regulatory analysis—business impact.* The office shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2) "b" after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

5.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the office shall adhere to the time lines described in Iowa Code section 17A.4A(4).

5.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the office. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

5.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) through 17A.4A(6).

5.6(9) *Publication of a concise summary.* The office shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(6).

5.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "a," unless a written request expressly waives one or more of the items listed in the section.

5.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the

administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) “b.”

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.7(17A,25B) Fiscal impact statement.

5.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services, shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.5.

5.7(2) If the office determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the office shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.8(17A) Time and manner of rule adoption.

5.8(1) *Time of adoption.* The office shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the office shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

5.8(2) *Consideration of public comment.* Before the adoption of a rule, the office shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

5.8(3) *Reliance on office expertise.* Except as otherwise provided by law, the office may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

5.9(1) The office shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

5.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the office shall consider the following factors:

- a.* The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action;
- c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

5.9(3) The office shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the office finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be

sent to the petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

5.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the office to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.10(17A) Exemptions from public rule-making procedures.

5.10(1) *Omission of notice and comment.* When the statute so provides, or with the approval of the administrative rules review committee, if the committee finds good cause that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the office may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by either state or federal law.

5.10(3) *Public proceedings on rules adopted without them.* The office may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 5.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the office shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 5.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the office may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 5.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.11(17A) Concise statement of reasons.

5.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the office shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Office of the Chief Information Officer, c/o Business Services Division, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

5.11(2) *Contents.* The concise statement of reasons shall contain:

- a.* The reasons for adopting the rule;
- b.* An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c.* The principal reasons urged in the rule-making proceeding for and against the rule, and the office's reasons for overruling the arguments made against the rule.

5.11(3) *Time of issuance.* After a proper request, the office shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.12(17A) Contents, style, and form of rule.

5.12(1) *Contents.* Each rule adopted by the office shall contain the text of the rule and, in addition:

- a. The date the office adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(2) or the office in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(2) or the office in its discretion decides to include such reasons; and
- g. The effective date of the rule.

5.12(2) *Incorporation by reference.* The office may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the office finds that the incorporation of such matter in the office's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the office's proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The office may incorporate such matter by reference in a proposed or adopted rule only if the office makes copies of such matter readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the office, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The office shall retain permanently a copy of any materials incorporated by reference in a rule of the office.

If the office adopts standards by reference to another publication, it shall deliver an electronic copy of the publication, or the relevant part of the publication, containing the standards to the administrative code editor who shall publish it on the general assembly's Internet site. If an electronic copy of the publication is not available, the office shall deliver a printed copy of the publication to the administrative code editor who shall deposit the copy in the state law library where it shall be made available for inspection and reference.

5.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the office shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the office. The office will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the office shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

5.12(4) *Style and form.* In preparing its rules, the office shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.13(17A) Office rule-making record.

5.13(1) Requirement. The office shall maintain an official rule-making record for each rule it proposes or adopts by publication in the Iowa Administrative Bulletin of a Notice of Intended Action. The rule-making record and materials incorporated by reference must be available for public inspection.

5.13(2) Contents. The office rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the office's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the office, and all other written materials of a factual nature and distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the office and considered by the CIO, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the office is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the office shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(3) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(6), and any office response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

5.13(3) Effect of record. Except as otherwise required by a provision of law, the office rule-making record required by this rule need not constitute the exclusive basis for office action on that rule.

5.13(4) Maintenance of record. The office shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 5.13(2) "g," "h," "i," or "j."

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.14(17A) Filing of rules. The office shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that were issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the office shall use the standard form prescribed by the administrative rules coordinator.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.15(17A) Effectiveness of rules prior to publication.

5.15(1) Grounds. The office may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so

provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The office shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

5.15(2) *Special notice.* When the office makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b,” the office shall employ all reasonable efforts to make the rule’s contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the office to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the office of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notices or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b” shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 5.15(2).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.16(17A) General statements of policy.

5.16(1) *Compilation, indexing, public inspection.* The office shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated and indexed and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

5.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this rule shall not be relied on by the office to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 5.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—5.17(17A) Review by office of rules.

5.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the office to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the office shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or whether the rule should be amended or repealed. The office may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

5.17(2) In conducting the formal review, the office shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the office’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the office or granted by the office. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy

of the office's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 6 CONTESTED CASES

129—6.1(8B,17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the office or by the division of administrative hearings in the department of inspections and appeals on behalf of the office.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.2(8B,17A) Definitions. Except where otherwise specifically defined by law, for purposes of this chapter:

“*Administrative law judge*” or “*ALJ*” means an employee of the administrative hearings division of the department of inspections and appeals who presides over contested cases and other proceedings.

“*Chief information officer*” or “*CIO*” means the state chief information officer or the state chief information officer’s designee.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Division*” means the division of administrative hearings of the department of inspections and appeals.

“*Issuance*” means, unless another date is specified in the order, the date of mailing of a decision or order or date of delivery if service is by other means.

“*Office*” means the office of the chief information officer authorized by Iowa Code chapter 8B.

“*Party*” means a party as defined in Iowa Code section 17A.2(8).

“*Presiding officer*” means the administrative law judge assigned to the contested case, or the chief information officer, whichever is appropriate.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the CIO did not preside.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.3(8B,17A) Time requirements.

6.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

6.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as otherwise precluded by rule or law. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.4(8B,17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the office action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specific office action which is disputed; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute. If the office denies the request, the office shall issue a written order specifying the basis for the denial.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.5(8B,17A) Informal settlement. A party to a controversy that may culminate in contested case proceedings or a party to a contested case proceeding may attempt informal settlement of the controversy or contested case by complying with the procedures set forth in this rule. No party to such a controversy or contested case shall be required to settle the controversy or contested case by submitting to informal settlement procedures.

6.5(1) Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

6.5(2) When signed by the parties to a controversy or contested case and by the CIO, a proposed settlement shall represent final disposition of the matter in place of any prospective or current contested case proceedings.

6.5(3) Where there are more than two parties to a controversy or contested case involving the office, a separate settlement between one party and the office is permissible.

6.5(4) A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations are likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.6(8B,17A) Notice of hearing and transmission of contested cases.

6.6(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery of the notice of hearing may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure;
- b. Certified mail, return receipt requested;
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

6.6(2) *Contents.* Notices of hearing shall contain the information required by Iowa Code section 17A.12(2), any additional information required by statute or rule, and the following information:

- a. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the office or the state and of parties' counsel where known;
- b. Reference to the procedural rules governing conduct of the contested case proceeding;
- c. Reference to the procedural rules governing informal settlement;
- d. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., an administrative law judge from the department of inspections and appeals or the CIO);
- e. Information on who to contact if auxiliary aids or services are needed to participate in the matter because of a disability; and
- f. The mailing address and e-mail address for filing with the division or office, whichever is applicable, and notice of the option of e-mail service as provided in paragraph 6.14(2) "b."

6.6(3) *Transmission of contested cases.* In every proceeding filed by the office with the division, the office shall complete a transmittal form. The transmittal form shall contain the information required by 481—subrule 10.4(1).

6.6(4) *Issuance of the hearing notice.* When a case is transmitted by the office to the division for hearing, the division shall issue the notice of hearing. The office shall provide the division with the information required by 481—subrule 10.4(2).

6.6(5) *Attachments.* The office shall attach the documents required by 481—subrule 10.4(3) to the completed transmittal form when it is sent to the division.

6.6(6) *Receipt.* When a properly transmitted case is received, it is marked with the date of receipt by the division. The division assigns an identifying number to each contested case upon receipt.

6.6(7) *Scheduling.* The division shall promptly schedule hearings for the office. The availability of an administrative law judge and any special circumstances shall be considered.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.7(8B,17A) Legal representation. Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Business entities, such as partnerships, corporations, or associations may be represented by a nonlawyer partner, member, officer, director, shareholder, other owner or manager, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. The attorney shall file an appearance in the contested

case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14. The cost of any such representation shall be borne by the represented party.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.8(8B,17A) Presiding officer.

6.8(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the CIO.

6.8(2) The CIO may deny the request only upon a finding that one or more of the following apply:

- a. Neither the office nor any officer of the office under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. An administrative law judge with the qualifications identified in subrule 6.8(3) is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g. The request was not timely filed.
- h. The request is not consistent with a specified statute.

6.8(3) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the office:

- a. A license to practice law in the state of Iowa;
- b. Three years' experience as an administrative law judge;
- c. For a hearing related to procurement, knowledge of contract law;
- d. For a hearing in which the underlying dispute or subject matter is related to information technology, and to the extent an administrative law judge with a background in information technology is available, a background in information technology.

6.8(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the office. A party must seek any available intra-agency appeal in order to exhaust administrative remedies.

6.8(5) Unless otherwise provided by law, the CIO, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.9(8B,17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the office in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.10(8B,17A) Telephone and electronic proceedings. The presiding officer may, on the presiding officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the parties or witnesses, as well as the nature of the case, shall be considered when the location is chosen. The presiding officer may permit any witness to testify by telephone or other electronic means. If there is a prehearing conference, the parties shall disclose at or before the prehearing conference whether any witness will be testifying by telephone or other electronic means. If there is not a prehearing conference, the parties shall disclose not less than three business days prior to the hearing date whether any witness will be testifying by telephone or other electronic

means unless any law, rule, or order of the presiding officer requires disclosure sooner. Objections, if any, shall be filed and served on all parties at least three business days in advance of hearing.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.11(8B,17A) Disqualification.

6.11(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.11(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other office functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.11(3) and 6.25(9).

6.11(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.11(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

6.11(5) If, during the course of the hearing, a party becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

6.11(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 129—6.27(8B,17A) and seek a stay under rule 129—6.31(8B,17A).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.12(8B,17A) Consolidation—severance.

6.12(1) Consolidation. The presiding officer may, upon motion by any party or the presiding officer's own motion, consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.12(2) Severance. The presiding officer may, upon motion by any party or the presiding officer's own motion, for good cause shown, order any contested case proceedings or portions thereof severed.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.13(8B,17A) Pleadings.

6.13(1) When required. Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

6.13(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

6.13(3) Answer.

a. An answer shall be filed within 20 days of service of the petition unless otherwise ordered.

b. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

c. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds.

d. An answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

e. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

f. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

6.13(4) Amendment. Any notice of hearing or petition may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer. The presiding officer may impose terms as a condition of allowing such amendments or grant a continuance.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.14(8B,17A) Service and filing of pleadings and other papers.

6.14(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the office, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.14(2) Service—to whom and how made. Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service may be made in the following ways:

a. Service may be made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

b. The presiding officer may by order or a party or a party's attorney may by consent permit service of particular documents by e-mail or similar electronic means unless precluded by a provision of law. In the absence of such an order or consent, electronic transmission shall not satisfy service requirements, but may be used to supplement service when rapid notice is desirable. Consent to electronic service by a party or a party's attorney shall be in writing, may be accomplished through electronic transmission to the office and other parties, and shall specify the e-mail address for such service. Service by electronic transmission is complete upon transmission unless the office or party making service learns the attempted service did not reach the party to be served.

6.14(3) *Filing—when required.*

a. After a matter has been assigned to the division, and until a proposed decision is issued, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the division, rather than the office. All pleadings, motions, documents or other papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

b. After the notice of hearing, when a matter has not been assigned to the division for hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the office.

6.14(4) *Filing—how and when made.*

a. Except where otherwise provided by law, a document is deemed filed at the time it is:

- (1) Delivered to the division pursuant to paragraph 6.14(3) "a" or to the office pursuant to paragraph 6.14(3) "b," and date-stamped received;
- (2) Delivered to an established courier service for immediate delivery to the proper entity;
- (3) Mailed by first-class mail or by state interoffice mail to the proper entity, so long as there is adequate proof of mailing; or
- (4) Transmitted by electronic mail (e-mail) or by other electronic means to the proper entity as provided in paragraph 6.14(4) "b."

b. All documents filed with the division or the office pursuant to these rules, except a person's request or demand for a contested case proceeding (see Iowa Code section 17A.12(9)), may be filed by e-mail or other electronic means as approved by the division or the office, whichever is appropriate. A document filed by e-mail or other approved electronic means is presumed to be an accurate reproduction of the original. If a document filed by e-mail or other approved electronic means is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by e-mail or other approved electronic means shall be the date the document is received by the division or the office. Neither the division nor the office will provide a mailed file-stamped copy of documents filed by e-mail or other approved electronic means.

6.14(5) *Proof of mailing.* Proof of mailing includes:

- a.* A legible United States Postal Service postmark on the envelope;
- b.* A certificate of service;
- c.* A notarized affidavit; or
- d.* A certification in substantially the following form(s):

(1) After a matter has been assigned to the division for hearing, the certification shall take the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(SIGNATURE)

(DATE)

(2) When a matter has not been assigned to the division for hearing, the certification shall take the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Office of the Chief Information Officer, Hoover State Office Building, Level B, 1305 East Walnut Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(SIGNATURE)

(DATE)

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.15(8B,17A) Discovery.

6.15(1) Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases.

6.15(2) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

6.15(3) The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. The time frames for discovery in the corresponding Iowa Rule of Civil Procedure govern those specific procedures, unless lengthened or shortened by the presiding officer.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

6.15(4) The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the presiding officer may order the parties to comply with these procedures unless doing so

would unreasonably complicate the proceedings or impose an undue hardship. As a practical matter the purpose of the disclosure requirements and discovery conference is served by the office's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 129—6.16(8B,17A).

6.15(5) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

6.15(6) Discovery shall be served on all parties to the contested case proceeding, but shall not be filed with the division or office.

6.15(7) A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the division or office, whichever is applicable, relating to discovery shall allege that the moving party previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

6.15(8) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.16(8B,17A) Subpoenas.

6.16(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Upon written request that complies with this rule, subpoenas shall be issued either by the division when a matter has been assigned to the division for hearing or by the office when a matter has not been assigned to the division for hearing. The request may be made in person or by mail or electronic mail. A request for a subpoena must be received by the division or the office, whichever is applicable, at least seven calendar days before the scheduled hearing, or the subpoena will not be issued.

6.16(2) A request for a subpoena shall include the following information, as applicable:

- a.* The name, address, e-mail address, and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date and time and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested; and
- f.* The date, time and location for production, or inspection and copying.

6.16(3) Each subpoena shall contain, as applicable:

- a.* The caption of the case;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date and time and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time and location for production, or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the presiding officer or designee;
- j.* The date of issuance;
- k.* A return of service.

6.16(4) The presiding officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena. The person who requested the subpoena is responsible for the costs associated with such service, and for the payment of any witness fees and mileage expenses in connection with execution of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

6.16(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the division or office, whichever is applicable, a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then move the presiding officer to issue an order compelling production.

6.16(6) Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the presiding officer may issue a decision. The presiding officer may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer may schedule oral argument or hearing by telephone or in person.

6.16(7) A person who is aggrieved by a ruling of a presiding officer and desires to challenge the ruling must appeal the ruling to the office in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 129—6.27(8B,17A) and 129—6.29(8B,17A), provided that all of the time frames are reduced by one-half.

6.16(8) If the person contesting the subpoena is not a party to the contested case proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the contested case proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.17(8B,17A) Motions.

6.17(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.17(2) Any party may file a written response to a motion within 15 days after the motion is served, unless the time period is extended or shortened by rules of the office or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.17(3) The presiding officer may schedule oral argument on any motion upon request by any party or the presiding officer's own motion.

6.17(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the office or an order of the presiding officer.

6.17(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer.

A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 129—6.30(8B,17A) and appeal pursuant to rule 129—6.29(8B,17A).
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.18(8B,17A) Prehearing conference.

6.18(1) Any party may request a prehearing conference. Additionally, the presiding officer may order a prehearing conference on the presiding officer's own motion. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. The presiding officer shall give written notice of the prehearing conference to all parties. For good cause, the presiding officer may permit variances from this rule.

6.18(2) Each party shall disclose at or prior to the prehearing conference:

- a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

6.18(3) In addition to the requirements of subrule 6.18(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations concerning the admissibility of exhibits;
- c. Identify matters which the parties intend to request be officially noticed;
- d. Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A, as permitted by Iowa Code section 17A.10(2), or waiver of office rules; and
- e. Consider any additional matters which will expedite the hearing.

6.18(4) Prehearing conferences shall be conducted by telephone or other electronic means unless otherwise ordered.

6.18(5) The parties shall exchange and receive witness and exhibit lists in advance of a prehearing conference.

6.18(6) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 6.23(4) no later than three business days in advance of hearing, unless otherwise ordered by the presiding officer at the prehearing conference.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.19(8B,17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.19(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the requesting party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The office may waive notice of such requests for a particular case or an entire class of cases.

6.19(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Any prior continuances;

- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection to the continuance;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request;
- i. Any applicable state or federal statutes or regulations; and
- j. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

6.19(2) The presiding officer may enter an order granting or denying an uncontested or contested application for a continuance.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.20(8B,17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with office rules. Requests for withdrawal may be oral or written. If the request is oral, the presiding officer may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.21(8B,17A) Intervention.

6.21(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.21(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing, whichever is earlier. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will be denied.

6.21(3) Grounds for intervention. In order to be entitled to intervene, the movant must demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. The movant will be aggrieved or adversely affected by a final order in the proceeding; and
- c. The interests of the movant are not adequately represented by existing parties.

6.21(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.22(8B,17A) Hearing procedures.

6.22(1) Role of presiding officer. The presiding officer shall preside at and be in control of the proceedings and shall have the authority to:

- a. Issue such orders and rulings as will ensure the orderly conduct of the proceedings;
- b. Rule on motions and objections;
- c. Administer oaths to witnesses;
- d. Admit or exclude testimony or other evidence;

- e. Require that the parties submit briefs; and
- f. Issue a proposed decision.

6.22(2) *Public hearing.* The hearing shall be open to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

6.22(3) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disruptive or disorderly.

6.22(4) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the office for at least five years from the date of decision.

6.22(5) *Right to participation.* Subject to terms and conditions prescribed by the presiding officer, parties in a contested case proceeding have the right to introduce evidence on issues of material fact, cross-examine witnesses who testify at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.22(6) *Examination of witnesses.* All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning consistent with Iowa Code section 17A.14 and other applicable law.

6.22(7) *Sequestering witnesses.* The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses during the hearing.

6.22(8) *Witness fees.* The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

6.22(9) *Depositions.* Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

6.22(10) *Objections.* All objections to procedures, admissions of evidence, or any other matter shall be timely made and stated on the record.

6.22(11) *Witness right to legal representation.* Witnesses are entitled to be represented by an attorney at their own expense. An attorney to a witness may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

6.22(12) *Order of proceedings.* The presiding officer shall generally conduct hearings in the following order:

- a. The presiding officer shall give an opening statement, which shall be on the record, in which the presiding officer briefly identifies himself or herself, identifies the primary parties and their representatives, notes the fact that all testimony is being recorded, and describes the nature of the proceedings;

- b. The parties shall be given an opportunity to present opening statements;

- c. The parties shall present their cases in the sequence determined by the presiding officer;

- d. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.23(8B,17A) Evidence.

6.23(1) The presiding officer shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may, where appropriate, take official notice of facts in accordance with Iowa Code section 17A.14(4).

6.23(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.23(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party that did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend its pleadings and to prepare on the additional issue.

6.23(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The way in which the parties shall mark exhibits shall be determined at the prehearing conference, if any. If there is no prehearing conference, the way in which the parties shall mark exhibits shall be determined by mutual agreement between the parties prior to hearing.

6.23(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such objection shall be timely, and the objecting party shall briefly state the grounds for the objection. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.23(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

6.23(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.24(8B,17A) Default.

6.24(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.24(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.24(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become the final action of the office unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 129—6.29(8B,17A). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.24(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.24(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.24(6) “Good cause” for purposes of this rule shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

6.24(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 129—6.27(8B,17A).

6.24(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.24(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

6.24(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 129—6.31(8B,17A).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.25(8B,17A) Ex parte communication.

6.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the office or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.25(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

6.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 129—6.14(8B,17A) and may be supplemented by telephone, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call, or other similar electronic means, that include all parties or their representatives.

6.25(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.25(6) Other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for the parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.25(1).

6.25(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 129—6.19(8B,17A).

6.25(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding

officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.25(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.25(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the office. Violation of ex parte communication prohibitions by office personnel shall be reported to the CIO for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.26(8B,17A) Recording costs. Upon request, the office shall provide a copy of the tape-recorded hearing or a printed transcript of the whole or any portion of the hearing at cost. The cost of preparing the tape or transcript of the hearing shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.27(8B,17A) Interlocutory appeals. Upon written request of a party or on the CIO's own motion, the CIO may review an interlocutory order of the presiding officer. In determining whether to do so, the CIO shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which such review of that interlocutory order by the office at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is earlier.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.28(8B,17A) Final decision.

6.28(1) *Final decision of office.* When the CIO presides over the reception of evidence at the hearing, the CIO's decision is a final decision.

6.28(2) *Proposed decision.* When the CIO does not preside at the reception of evidence, the presiding officer shall make a proposed decision.

6.28(3) *Contents of decision.* The proposed or final decision or order shall:

- a. Be in writing or stated on the record.
- b. Include findings of fact. Findings of fact, if set forth within statutory language, shall be accompanied by a concise, explicit statement of underlying facts supporting the findings.
- c. Include conclusions of law stated separately from the findings of fact and supported by cited authority or a reasoned opinion.
- d. Be based on the record of the contested case. The record of the contested case shall include all materials specified in Iowa Code section 17A.12(6). This record shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

6.28(4) *Proposed decision becomes final.* The proposed decision of the presiding officer becomes the final decision of the office without further proceedings unless there is an appeal to, or review on motion of, the office within the time provided in rule 129—6.31(8B,17A).

6.28(5) *Reports.* The office shall send the division a copy of any request for review of a proposed decision issued by a presiding officer from the division. The office shall notify the division of the results of the review, the office's final decision, and any judicial decision issued.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.29(8B,17A) Appeals and review.

6.29(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the CIO within 14 days after issuance of the proposed decision. Such an appeal is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

6.29(2) *Review.* The CIO may initiate review of a proposed decision on the CIO's own motion at any time within 21 days following the issuance of such a decision.

6.29(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought; and
- e. The grounds for relief.

6.29(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The CIO may remand a case to the presiding officer for further hearing or may preside at the taking of additional evidence.

6.29(5) *Scheduling.* The office shall issue a schedule for consideration of the appeal.

6.29(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The CIO may resolve the appeal on the briefs or provide an opportunity for oral argument. The CIO may shorten or extend the briefing period as appropriate.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.30(8B,17A) Applications for rehearing.

6.30(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

6.30(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the office decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.29(4), the applicant requests an opportunity to submit additional evidence.

6.30(3) *Time of filing.* The application shall be filed with the office within 20 days after issuance of the final decision.

6.30(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the office shall serve copies on all parties.

6.30(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the CIO grants the application within 20 days after its filing.

6.30(6) *Proceedings.* If the CIO grants an application for rehearing, the CIO may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will be received, the CIO may remand the case to the presiding officer for further hearing or may preside at the taking of additional evidence. If additional evidence will not be received, the CIO may issue a ruling without oral argument or hearing. The CIO may, on the request of a party or on the CIO's own motion, order or permit the parties to provide written argument on one or more designated issues. The CIO may be assisted by an administrative law judge in all proceedings related to an application for rehearing.
[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.31(8B,17A) Stays of office actions.

6.31(1) *When available.*

a. Any party to a contested case proceeding may petition the office for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the office. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The CIO may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the office for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the office is required to exhaust administrative remedies prior to seeking a stay from the district court.

6.31(2) *When granted.* In determining whether to grant a stay, the CIO or the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c."

6.31(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the office or any other party.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.32(8B,17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.33(8B,17A) Emergency adjudicative proceedings.

6.33(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and consistent with the Constitution and other provisions of law, the office may issue a written order in compliance with Iowa Code section 17A.18A to order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the office by emergency adjudicative order. Before issuing an emergency adjudicative order, the office shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the office is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the office is necessary to avoid the immediate danger.

6.33(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the office's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the office;
- (3) Certified mail to the last address on file with the office;
- (4) First-class mail to the last address on file with the office; or
- (5) Electronic service. E-mail notification may be used as the sole method of delivery if the person

required to comply with the order has filed a written request that office orders be sent by e-mail and has provided an e-mail address for that purpose.

c. To the extent practicable, the office shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.33(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the office shall make reasonable immediate efforts to contact by telephone, or other similar electronic means, the persons who are required to comply with the order.

6.33(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the office shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which office proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further office proceedings to a later date will be granted only in compelling circumstances upon application in writing.

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

129—6.34(8B,17A) Judicial review. Judicial review of the office's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

6.34(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the office's final decision. The office's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

6.34(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 6.30(5).

[ARC 2542C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapters 8B and 17A.

[Filed ARC 2542C (Notice ARC 2421C, IAB 3/2/16), IAB 5/25/16, effective 6/29/16]

ECONOMIC DEVELOPMENT AUTHORITY[261]

[Created by 1986 Iowa Acts, chapter 1245]

[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

[Prior to 9/7/11, see Economic Development, Iowa Department of[261];
renamed Economic Development Authority by 2011 Iowa Acts, House File 590]

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261—115.1(15E) Tax credits for investments in qualifying businesses and community-based seed capital funds. Tax credits for investments in qualifying businesses and community-based seed capital funds may be claimed as provided in this rule.

115.1(1) Tax credits allowed only after a certain date. A taxpayer may claim a tax credit under this rule for equity investments in certain qualifying businesses or community-based seed capital funds. Only equity investments made on or after January 1, 2011, qualify for a tax credit under this rule. Equity investments made before that date must be claimed under 123—Chapter 2.

115.1(2) Investments in qualifying businesses.

a. A taxpayer may claim a tax credit under this subrule for a portion of the taxpayer's equity investment in a qualifying business if that investment was made on or after January 1, 2011.

b. The tax credit may be claimed against the taxpayer's tax liability for any of the following taxes:

- (1) The personal net income tax imposed under Iowa Code chapter 422, division II.
- (2) The business tax on corporations imposed under Iowa Code chapter 422, division III.
- (3) The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- (4) The tax on the gross premiums of insurance companies imposed under Iowa Code chapter 432.
- (5) The tax on moneys and credits imposed under Iowa Code section 533.329.

c. Investments made in qualifying businesses on or after January 1, 2011, and before July 2, 2015, are governed by 2015 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

d. Investments made in qualifying businesses on or after July 2, 2015, are governed by 2016 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

115.1(3) Investments in community-based seed capital funds.

a. A taxpayer may claim a tax credit under this subrule for a portion of the taxpayer's equity investment in a community-based seed capital fund if that investment was made on or after January 1, 2011.

b. The tax credit may be claimed against the taxpayer's tax liability for any of the following taxes:

- (1) The personal net income tax imposed under Iowa Code chapter 422, division II.
- (2) The business tax on corporations imposed under Iowa Code chapter 422, division III.
- (3) The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- (4) The tax on gross premiums of insurance companies imposed under Iowa Code chapter 432.
- (5) The tax on moneys and credits imposed under Iowa Code section 533.329.

c. Investments made in community-based seed capital funds on or after January 1, 2011, and before July 2, 2015, are governed by 2015 Iowa Code sections 15E.41 to 15E.46, 422.11F, 422.33, 422.60, 432.12C, and 533.329.

d. Investments made in community-based seed capital funds on or after July 2, 2015, are not eligible for tax credits. See 2015 Iowa Acts, Senate File 510, sections 107 to 128, which include the repeal of Iowa Code section 15E.45 and other provisions related to the administration of community-based seed capital funds.

115.1(4) Amount of tax credit that may be claimed by taxpayer.

a. In the case of investments made on or after July 1, 2011, and before July 2, 2015, the amount of tax credit available to a taxpayer under this rule is equal to 20 percent of the taxpayer's equity investment in either a qualifying business or community-based seed capital fund. In the case of investments made on or after July 2, 2015, the amount of tax credit available to a taxpayer under this rule is equal to 25 percent of the taxpayer's equity investment in a qualifying business.

b. In the case of investments made on or after July 1, 2011, and before July 2, 2015, the maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be \$50,000. Each year, an investor, and all affiliates of that investor, shall not claim tax credits under this rule for more than five different investments in five different qualifying businesses. In the case of investments made on

or after July 2, 2015, the maximum amount of tax credit that may be issued per calendar year to a natural person and the person's spouse or dependent shall not exceed \$100,000 combined. For purposes of this paragraph, a tax credit issued to a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual shall be deemed to be issued to the individual owners based upon the pro rata share of the individual's earnings from the entity. For purposes of this paragraph, "dependent" has the same meaning as provided by the Internal Revenue Code.

c. Investments in community-based seed capital funds.

(1) An investor in a community-based seed capital fund shall receive a tax credit pursuant to this rule only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments in a qualifying business made by the community-based seed capital fund or in an Iowa-based seed capital fund which has at least 40 percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this rule with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

(2) Paragraph "c" only applies to investments in community-based seed capital funds made on or after July 1, 2011, and before July 2, 2015.

d. The maximum amount of tax credits that may be issued per calendar year for equity investments in any one qualifying business shall not exceed \$500,000.

115.1(5) *Claiming an investment tax credit.* A taxpayer that makes an investment in a qualifying business or community-based seed capital fund and that otherwise meets the requirements of this chapter will receive a board-approved tax credit certificate from the authority. To claim the credit, the taxpayer must attach the certificate to a tax return filed with the department of revenue. For more information on claiming the tax credit, see department of revenue rule 701—42.22(15E,422). See also 2015 Iowa Acts, chapter 138, division XX.

115.1(6) *Tax credits for pass-through entities.* If the taxpayer that is entitled to a tax credit for an investment in a community-based seed capital fund or a qualifying business is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity must allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns.

115.1(7) *Refundability for certain tax credits.* For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division II, any tax credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

115.1(8) *Carryforward period for certain tax credits.* For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, divisions III and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

115.1(9) *Carryback of credits prohibited.* A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.2(15E) Definitions. For purposes of this chapter, unless the context otherwise requires:

"*Affiliate*" means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.

"*Authority*" means the economic development authority created in 2011 Iowa Acts, House File 590.

"*Board*" means the same as defined in Iowa Code section 15.102 as amended by 2011 Iowa Acts, House File 590, section 3.

"*Community-based seed capital fund*" means a fund that meets the following criteria:

1. Is organized as a limited partnership or limited liability company;
2. Has, on or after January 1, 2011, a total of capital commitments from both investors and investments in qualifying businesses of at least \$125,000, but not more than \$3 million. If the fund is either a rural business investment company under the Rural Business Investment Program of the federal Farm Security and Rural Investment Act of 2002 or an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds, the fund may have more than \$3 million of capital commitments from both investors and investments in qualifying businesses; and
3. Has no fewer than five investors that are not affiliates, with no single investor and affiliates of that investor together owning a total of more than 25 percent of the ownership interests outstanding in the fund.

“Controlling equity interest” means ownership of more than 50 percent of the outstanding equity interests of a corporation, partnership, limited liability company or trust.

“Entrepreneurial assistance program” includes the entrepreneur investment awards program administered under Iowa Code section 15E.362, the receipt of services from a service provider engaged pursuant to Iowa Code section 15.411(1) or the program administered under Iowa Code section 15.411(2).

“Equity” means common or preferred corporate stock or warrants to acquire such stock, membership interests in limited liability companies, partnership interests in partnerships, or near equity. Equity shall be limited to securities or interests acquired only for cash and shall not include securities or interests acquired at any time for services, contributions of property other than cash, or any other non-cash consideration.

“Investor” means a person that makes a cash investment in a community-based seed capital fund or in a qualifying business on or after January 1, 2011, and before July 2, 2015. “Investor” also means a person making a cash investment in a qualifying business on or after July 2, 2015. “Investor” does not include a person that holds at least a 70 percent ownership interest as an owner, member, or shareholder in a qualifying business for investments made on or after January 1, 2011.

“Management control” means holding more than 50 percent of the voting power on any board of directors or trustees, any management committee, or any other group managing a corporation, partnership, limited liability company or trust.

“Person” means an individual, corporation, limited liability company, business trust, estate, trust, partnership or association, or any other legal entity.

“Qualifying business” means, in the case of investments made on or after July 2, 2015, a business that meets all of the following criteria:

1. The principal business operations of the business are located in the state of Iowa;
2. The business has been in operation for six years or less, as measured from the date of the investment for which a credit is claimed;
3. The business is participating in an entrepreneurial assistance program. The authority may waive this requirement if a business establishes that its owners, directors, officers, and employees have an appropriate level of experience such that participation in an entrepreneurial assistance program would not materially change the prospects of the business. The authority may consult with outside service providers in consideration of such a waiver;
4. The business is not a business engaged primarily in retail sales, real estate or the provision of health care services or other services requiring a professional license;
5. The business does not have a net worth that exceeds \$10 million as of the date of the investment for which the credit is claimed; and
6. The business shall have secured all of the following at the time of application for tax credits:
 - At least two investors.
 - Total equity financing, binding investment commitments, or some combination thereof, equal to at least \$500,000 from investors.

For purposes of paragraph “6,” “investor” includes a person that executes a binding investment commitment to a business.

“Services requiring a professional license” includes but is not limited to the professions listed in Iowa Code section 496C.2.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.3(15E) Cash investments required. In order to qualify for a tax credit under this chapter, the taxpayer’s investment must be made in the form of cash to purchase equity in a qualifying business or in a community-based seed capital fund.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.4(15E) Applying for an investment tax credit.

115.4(1) A taxpayer that desires to receive an investment tax credit for an equity investment in a qualifying business or community-based seed capital fund shall submit an application to the board for approval and provide such other information and documentation as may be requested by the board. Application forms for the investment tax credit may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. The telephone number is (515)725-3000.

115.4(2) Applications shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer’s equity investment was made. For investments made on or after July 2, 2015, and before January 1, 2016, applications for the investment tax credit shall be accepted by the authority until August 17, 2016.

EXAMPLE 1: A taxpayer makes an equity investment in a qualifying business on December 31, 2011. The taxpayer has until March 31, 2012, to apply to the authority for an investment tax credit.

EXAMPLE 2: A taxpayer makes an equity investment in a qualifying business on July 1, 2012. The taxpayer has until March 31, 2013, to apply to the authority for an investment tax credit.

The authority may accept applications after the deadline under extenuating circumstances.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.5(15E) Verification of qualifying businesses and community-based seed capital funds.

115.5(1) *Qualifying businesses.*

a. Within 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2015 calendar year, not later than August 17, 2016), a qualifying business shall provide to the authority the following information as a prerequisite to the authority’s issuance of any investment tax credits to investors in such qualifying business:

(1) A signed statement, from an officer, director, manager, member, or general partner of the qualifying business, that contains a description of the general nature of its business operations, the location of the principal business operations, the date on which the business was formed, and the date on which the business commenced operations;

(2) A balance sheet, certified by the chief executive officer and the chief financial officer of the qualifying business, that reflects the qualifying business’s assets, liabilities and owners’ equity as of the close of the most recent month or quarter;

(3) A signed statement, from an owner of the business, that describes the manner in which the business satisfies one of the business experience requirements set forth in the definition of a qualifying business under rule 261—115.2(15E); and

(4) A signed statement, from an officer, director, manager, member or general partner of the qualifying business, that states the names, addresses, shares or equity interests issued, consideration paid for the shares or equity interests, and the amounts of any tax credits of all shareholders or equity holders who may initially qualify for the tax credits and the date on which the investment was made. The statement shall contain a commitment by the qualifying business to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change.

b. Upon the authority’s receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time,

determine whether a business is a qualifying business. If the authority verifies that the business is a qualifying business, the authority shall register the qualifying business on a registry of such qualifying businesses. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers who make equity investments in qualifying businesses registered with the authority. The authority shall issue written notification to the qualifying business and the applicant that such business has been registered as a qualifying business with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(15E) for any failure of the business to continuously satisfy the requirements necessary for verification and registration as a qualifying business.

115.5(2) *Community-based seed capital funds.*

a. Within 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2011 calendar year, not later than June 30, 2012), a community-based seed capital fund shall provide to the authority information as a prerequisite to the authority's issuance of investment tax credits to investors in such community-based seed capital fund. A community-based seed capital fund cannot invest in the Iowa fund of funds organized by the Iowa capital investment corporation under Iowa Code section 15E.65 but may invest up to 60 percent of its committed capital in an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds. The following information must be provided:

(1) A copy of the fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement, or any combination thereof, certified by the chief executive officer of the community-based seed capital fund.

(2) A signed statement, from an officer, director, manager, member or general partner of the fund, that states the total amount of capital contributions or capital commitments from investors, the total number of individual investors that are not affiliates, and the ownership interest of each individual investor in the fund.

(3) A signed statement, from an officer, director, manager, member or general partner of the fund, that states the names, addresses, equity interests issued, consideration paid for the interests and the amounts of any tax credits, of all limited partners or members who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The statement shall also contain a commitment by the fund to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change.

b. Upon the authority's receipt of the information and documentation necessary to demonstrate a community-based seed capital fund's satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a fund is a community-based seed capital fund. If the authority verifies that the fund is a community-based seed capital fund, the authority shall register the community-based seed capital fund on a registry of such community-based seed capital funds. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers that make equity investments in the community-based seed capital funds registered with the authority. The authority shall issue written notification to the community-based seed capital fund and the applicant that such fund has been registered as a community-based seed capital fund with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(15E) for any failure of the community-based seed capital fund to continuously satisfy the requirements necessary for verification and registration as a community-based seed capital fund.

c. The authority will not verify investments made in community-based seed capital funds on or after July 2, 2015.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.6(15E) Approval, issuance and distribution of investment tax credits.

115.6(1) *Approval by the board.* Upon verification and registration by the authority of a qualifying business or community-based seed capital fund and approval of the taxpayer's application, the board will approve the issuance of a tax credit certificate to the taxpayer applying for the tax credit.

115.6(2) *Issuance by the authority.* Upon approval by the board, the authority shall issue a tax credit certificate to the applicant, provided, however, that such tax credit certificate shall be subject to rescission pursuant to rule 261—115.9(15E). In the case of investments made on or after July 2, 2015, the authority will not issue a tax credit certificate prior to July 1, 2016.

115.6(3) *Preparation of certificate.* The tax credit certificate shall be prepared by the authority in a form approved by the board and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the qualifying business or community-based seed capital fund, the year in which the credit may be redeemed and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

115.6(4) *Tax credit amount limitations.* The aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119, subsection 2. For fiscal year 2012 and all subsequent fiscal years, that amount is \$2 million. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed \$500,000.

If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum amounts are received and approved, the applications will be carried forward and prioritized to receive tax credit certificates on a first-come, first-served basis in subsequent fiscal years.

When carrying forward and prioritizing such applications, the authority shall (1) issue tax credit certificates to the taxpayers for such carryover tax credits before issuing any new tax credits to later applicants, and (2) apply the aggregate amount of the credits carried over against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.7(15E) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422). In the case of tax credits issued for investments made on or after July 2, 2015, a taxpayer shall not claim a tax credit at the department of revenue prior to September 1, 2016.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.8(15E) Notification to the department of revenue. Upon the issuance and distribution of investment tax credits for a tax year, the authority shall promptly notify the department of revenue by providing copies of the tax credit certificates issued for such tax year to the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for the tax year.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.9(15E) Rescinding tax credits.

115.9(1) *Rescission of credits for investments in qualifying businesses.*

a. In the case of investments made on or after July 1, 2011, and before January 1, 2014, within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, a qualifying business shall have secured total equity or near equity financing equal to at least \$250,000. The business shall provide to the authority information and documentation sufficient to demonstrate that the business has secured total equity or near equity financing equal to at least \$250,000

and that such financing was secured within the 24 months required by this rule and shall do so by the equity deadline. For purposes of this subrule, the “equity deadline” shall be the next June 30 following the end of the calendar year in which the qualifying business is required to have secured total equity or near equity financing equal to at least \$250,000. For example, a qualifying business in which equity investments qualifying for investment tax credits were made in 2011 shall have an equity deadline of June 30, 2014. Examples of sufficient information and documentation include, but are not limited to, the following:

(1) Corporate, partnership or limited liability company-certified resolutions setting forth the names of individuals or entities making capital contributions and the amounts of such capital contributions;

(2) Certified corporate, partnership, or limited liability company minutes reflecting the names of individuals or entities making capital contributions and the amounts of such capital contributions.

b. On or by the equity deadline, a qualifying business shall certify to the authority, by a statement signed by an officer, director, member, manager, or general partner of the qualifying business, that it secured the requisite amount of equity financing required by this rule within 24 months from the date on which the equity investments qualifying for investment tax credits were made and shall recertify to the authority that the qualifying business continues to meet the requirements set forth in subrule 115.5(1).

c. In the event that a qualifying business fails to meet or maintain any requirement set forth in this rule, including, without limitation, timely filing of the certifications described in paragraph 115.9(1) “b,” the authority, upon action by the board, shall rescind any tax credit certificates issued to those taxpayers and shall notify the department of revenue that it has done so. A tax credit certificate that has been rescinded by the authority shall be null and void, and the department of revenue will not accept the tax credit certificate. In addition, the authority shall remove the qualifying business from the registry and shall issue written notification of such removal to the qualifying business and the applicants.

115.9(2) *Rescission of credits for investments in community-based seed capital funds.*

a. A community-based seed capital fund shall have invested at least 33 percent of its invested capital in one or more separate qualifying businesses on or by the last day of the 48-month period that commences with the fund’s investing activities.

b. On or by the last day of the 48-month period described in paragraph 115.9(2) “a,” a community-based seed capital fund shall certify to the board, by a statement signed by an officer, director, member, manager, or general partner of the community-based seed capital fund, that it has met the requirements of this rule within the time period prescribed by this subrule and shall recertify to the board that the community-based seed capital fund continues to meet the requirements set forth in subrule 115.5(2).

c. In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this subrule, including, without limitation, timely filing of the certifications described in paragraph 115.9(2) “b,” the authority, upon action of the board, shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so. A tax credit certificate that has been rescinded by the authority shall be null and void, and the department of revenue will not accept the tax credit certificate. In addition, the authority shall remove such community-based seed capital fund from the registry and shall issue written notification of such removal to the community-based seed capital fund and the applicants.

d. Notwithstanding paragraphs 115.9(2) “a” to “c,” a community-based seed capital fund may apply to the authority for a one-year waiver from the requirements of this rule. The authority shall, upon review of a community-based seed capital fund’s application for waiver, exercise reasonable discretion in granting or denying such waiver. In the event that the authority grants to a community-based seed capital fund a one-year waiver from the requirements of this rule, the authority shall defer any rescission of the tax credit certificates until the expiration of such one-year waiver period. If the community-based seed capital fund meets the requirements of this rule by the expiration of such one-year waiver period, the tax credit certificates shall not be rescinded. However, the tax credit certificates shall be rescinded at the end of such one-year waiver period if such requirements have not been met.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 1429C, IAB 4/16/14, effective 5/21/14; ARC 2541C, IAB 5/25/16, effective 6/29/16]

261—115.10(15E) Additional information—confidentiality—annual report.

115.10(1) *Additional information.* The authority may at any time request additional information and documentation from a qualifying business or community-based seed capital fund regarding the operations, job creation and economic impact of such qualifying business or community-based seed capital fund, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

115.10(2) *Confidentiality.*

a. Except as provided in paragraph “*b*,” all information or records in the possession of the authority with respect to this chapter shall be presumed by the authority to be a trade secret protected under Iowa Code chapter 550 or common law and shall be kept confidential by the authority unless otherwise ordered by a court.

b. All of the following shall be considered public information under Iowa Code chapter 22:

(1) The identity of a qualifying business.
(2) The identity of an investor and the qualifying business in which the investor made an equity investment.

(3) The number of tax credit certificates issued by the authority.

(4) The total dollar amount of tax credits issued by the authority.

115.10(3) *Annual report.* The authority will publish an annual report of the activities conducted pursuant to Iowa Code chapter 15E, division V, and will submit the report to the governor and the general assembly. The report will include a listing of eligible qualifying businesses and the number of tax credit certificates and the amount of tax credits issued by the authority.

[ARC 0009C, IAB 2/8/12, effective 3/14/12; ARC 2541C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapter 15E, division V, and 2011 Iowa Acts, Senate File 517.

[Filed ARC 0009C (Notice ARC 9845B, IAB 11/16/11), IAB 2/8/12, effective 3/14/12]

[Filed ARC 1429C (Notice ARC 1289C, IAB 1/22/14), IAB 4/16/14, effective 5/21/14]

[Filed ARC 2541C (Notice ARC 2373C, IAB 1/20/16), IAB 5/25/16, effective 6/29/16]

CHAPTER 9 TITLE GUARANTY DIVISION

265—9.1(16) Definitions. The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

“Abstract” means a written or electronic summary of all matters of record affecting title to a specific parcel of real estate prepared in accordance with abstract minimum standards adopted by the division, provided however, that for nonpurchase transactions, “abstract” may also mean a written or electronic short-form summary setting forth the titleholders, liens, and encumbrances in accordance with guidelines adopted by the division.

“Abstractor” means a person who is engaged in the practice of searching public records for the purpose of creating abstracts.

“Authority” means the Iowa finance authority established by Iowa Code chapter 16.

“Certificate” means the form used to guarantee title, including any part or schedule thereof and any endorsements thereto.

“Claim” means loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment, certificate, closing protection letter, mortgage release certificate, or by reason of any other matter for which the division is actually, possibly, or allegedly liable.

“Claim loss” means amounts paid by the division in the investigation and resolution of a claim including, but not limited to, payments to the guaranteed, payments to adverse claimants, attorneys’ fees, and all other expenses and costs related to or arising from the claim.

“Closing protection letter” means the division’s written agreement to indemnify a lender or borrower or both for loss caused by a participating closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the participating closer.

“Commitment” means the division’s written offer to issue a certificate.

“Division” means Iowa title guaranty, a division of the Iowa finance authority.

“Division board” means the board of the division created pursuant to Iowa Code section 16.2A(1).

“Field issuer” means a participant authorized by the division to issue commitments and certificates.

“Mortgage release certificate” means a certificate of release or a certificate of partial release issued by the division, pursuant to Iowa Code section 16.92.

“Participant” means a participating attorney, a participating abstractor, or a participating closer.

“Participating abstractor” means an abstractor who is authorized by the division to prepare abstracts for division purposes.

“Participating attorney” means an attorney licensed to practice law in the state of Iowa who is authorized by the division to prepare title opinions for division purposes.

“Participating closer” means any of the following authorized by the division to issue a closing protection letter: an Iowa licensed attorney disbursing funds through an interest on lawyer trust account, a closing agent licensed by the Iowa division of banking, or a real estate broker licensed by the Iowa real estate commission disbursing funds through a real estate trust account.

“Party” means a participant, or any other person, that has a contractual relationship with the division to provide services for which a claim may be brought against the division.

“Person” means an individual or legal entity, including corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.2(16) Purpose. This chapter describes the mission, organization, programs and operations of the division, including the office where and the means by which a person may obtain information and make submissions or requests.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.3(16) Mission. The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state of Iowa and to perform other duties as assigned by Iowa law. Surplus funds generated by the division shall be transferred to the authority's housing assistance fund after providing for adequate reserves and for the operating expenses of the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.4(16) Organization.

9.4(1) Location. The office of the division is located at 2015 Grand Avenue, Des Moines, Iowa 50312. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's Web-site address is www.iowatitleguaranty.gov, and the division's telephone and facsimile numbers are as follows: (515)725-4900 (general telephone number); 1-800-432-7230 (toll-free telephone number); and (515)725-4901 (facsimile). The division's e-mail address is titleguaranty@iowa.gov. Inquiries, submissions, applications and other requests for information may be directed to the division at the address set forth herein. Requests may be made personally or by telephone, fax, mail or e-mail.

9.4(2) Division board. A chair and vice chair shall be elected annually by the members of the division board at the first quarterly meeting following July 1 of each year, which is the beginning of the division's fiscal year.

9.4(3) Meetings. Meetings of the division board shall generally be held quarterly on the date and time determined by the division board. Meetings of the division board may also be held at the call of the chair or on written request of two division board members. The division will give advance public notice of the specific date, time and place of each division board meeting. At least 24 hours before commencement of a division board meeting, the division will post the tentative agenda at the office of the division and on the division's Web site. Division board meetings may be conducted by conference call. Any person may attend and observe division board meetings except for any portion of a division board meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the division board meetings are available at the office of the division and on the division's Web site. Three members of the division board constitute a quorum. An affirmative vote of a majority of the division board members is necessary for any substantive action taken by the division board. The majority shall not include any division board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.5(16) Operation. The division offers guaranties of real property titles in the state through the issuance of commitments and certificates.

9.5(1) Commitments, certificates, forms and manuals. The terms, conditions, and form of commitments and certificates shall be approved by the division board. The division may adopt and use manuals and other forms as the division deems necessary for implementation and administration of the title guaranty program.

a. The division will provide forms to a participant for use in issuing commitments and certificates on behalf of the division. A participant may not alter any form supplied by the division or use a form supplied by another person to bind the division. In addition, the participant shall not transfer or attempt to transfer unissued commitments or certificates to another participant or other person unless authorized in writing by the division.

b. If a participant fails to comply with the requirements of this rule, in addition to the division's other rights and remedies, the division may refuse to allow the participant access to any forms until the participant complies with the requirements of this chapter to the satisfaction of the division.

c. A participant shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participant to account for any form supplied by the division, or the failure of the participant to comply with the requirements of this rule.

9.5(2) *Application for commitments and certificates.* The division shall make an application for commitments and certificates available at the office of the division and on the division's Web site.

9.5(3) *Rates.* The division shall set the rates for certificates and closing protection letters in an amount sufficient to permit the title guaranty program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims. In transactions involving extraordinary risk or unusual or unique endorsements, the division may charge additional fees.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.6(16) Participants.

9.6(1) *General provisions.* An applicant shall submit a participant application and the first year's annual fee and shall sign a participation agreement in order to be authorized to provide one or more services on behalf of the division.

9.6(2) *Participant application.* Applications for participation and renewal are available on the division's Web site. An applicant shall submit an application to provide one or more services on behalf of the division. If the applicant is approved as a participant, the participant is required to submit a renewal application annually.

9.6(3) *Eligibility considerations.* In determining whether to approve or deny a participant application, the division may consider the following, including but not limited to:

- a. The needs of the public and the needs of existing or potential customers of the applicant.
- b. A history of the operation and management of the applicant's business.
- c. The character, fitness, financial responsibility and experience of the applicant and the applicant's employees.
- d. A credit report or criminal background check of the applicant or the applicant's employees.
- e. A record of default in the payment of moneys collected for others by the applicant or the applicant's employees.
- f. A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.
- g. Compliance with the title and settlement best practices adopted by the division.
- h. Other factors as determined by the division.

9.6(4) *Participation agreement.* The participation agreement sets forth the contractual relationship between the participant and the division. A new participation agreement is executed annually and when otherwise required by the division.

9.6(5) *Annual fee.* A participant may be required to pay an annual fee to be eligible to participate in the title guaranty program. The fee, if any, shall be set by the division.

9.6(6) *Professional liability insurance.* A participant shall maintain professional liability insurance, also known as errors and omissions insurance, at all times while acting as an agent of the division, with such coverage and in such amounts as the division may determine.

9.6(7) *Agent relationship.* A participant is only authorized to act as an agent of the division for the purposes and in the manner set forth in the participant's participation agreement, the Code of Iowa, these rules, manuals and any other written instructions given by the division. The authority of a participant to act as an agent of the division is not exclusive and is subject to the rights of the authority, the division, and other participants, agents, or representatives of the division.

9.6(8) *Conflict of interest.* A participant shall not, without prior authorization of the division, prepare an abstract or issue a title opinion, commitment, certificate, or closing protection letter for a transaction in which the participant has a personal or financial interest in the real estate that is the subject of that transaction.

9.6(9) *Clearance of title objections.* All title objections must be cleared in accordance with applicable division manuals and any other written instructions given by the division prior to the issuance of a certificate. Any underwriting determination about which there may be a bona fide difference of opinion among attorneys, which is not specifically addressed by division manuals or instructions, shall be approved by the division in writing.

9.6(10) Commitment and certificate coverage limitations. A field issuer shall obtain written authorization from the division prior to issuing a commitment or certificate that exceeds the allowable maximum amount of coverage, as determined by the division. If authorization required under this subrule is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

9.6(11) Document retention. A participant shall maintain transaction files in such a manner that information pertaining to activities of the participant is readily available to the division while protecting confidential client information. A participant shall retain files for a period of ten years after the effective date of the certificate or the effective date of the commitment if a certificate is not issued. A participating abstractor shall retain a written or electronic copy of each abstract prepared for division purposes and shall provide a copy to the division upon request.

9.6(12) Training. The division may require a participant and the participant's staff, as a condition of participation, to participate in training sessions or continuing education seminars as deemed necessary by the division in order to ensure compliance with division requirements and procedures.

9.6(13) Compliance. Participants shall comply with the Code of Iowa, these rules, the participation agreement, manuals, and any other written instructions given by the division. The division may audit the participant, with or without notice, for verification of compliance. An audit may include, but not be limited to, a review of the participant's commitment and certificate issuance procedures, a test of title plants and tract indices, and a review of closing policies and procedures and escrow account details. An inspection of a title plant may be performed by the division or its designee to determine if the title plant meets the criteria set forth in paragraph 9.7(1) "a."

9.6(14) Revocation. The division has discretion to revoke a participant's authorization to provide services on behalf of the division for reasons including, but not limited to, the following:

- a. Failure to comply with the terms and conditions of the participation agreement.
- b. Failure to submit an annual renewal application.
- c. Knowingly withholding or misrepresenting material facts relied upon by the division.
- d. Fraud, theft, dishonesty, or misappropriation of funds or documents.
- e. Deterioration of the participant's financial condition adversely affecting the participant's ability to provide services on behalf of the division.
- f. A finding by the division director of material noncompliance with the Code of Iowa, these rules, manuals, and any other written instructions given by the division.
- g. Other factors as determined by the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.7(16) Services offered.

9.7(1) Abstracting. Abstracts utilized for division purposes must be prepared by a participating abstractor.

a. *Title plant.* A participating abstractor shall own and maintain, or lease and use, a title plant including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under paragraph 9.7(1) "c" or authorized under paragraph 9.7(1) "d." Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program. A government-maintained and -controlled database is not considered a title plant for division purposes.

b. *Intent to build title plant.* The division may authorize an abstractor that is building or that intends to build a title plant to prepare abstracts for use by the division, upon review of the following:

- (1) The abstractor's business plan;
- (2) Evidence that a title plant will be built for a specific county or counties within three years;
- (3) A time line for completion of the title plant; and
- (4) A description of the applicant's abstracting experience.

c. Grandfathered attorney. A participating attorney who has provided abstracts continuously from November 12, 1986, to the date of application to provide abstracts for division purposes, either personally or through persons under the participating attorney's supervision and control, shall be exempt from the requirements to own or lease a title plant. This exemption is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney.

d. Title plant waivers. The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service, and a competitive price. Iowa Code section 16.91(5) "b" allows the division board to waive the up-to-date title plant requirements under certain conditions.

(1) General provisions. The division board shall consider an application for a title plant waiver upon submission by an attorney or an abstractor.

(2) Submission of application. The division shall provide an application form at the office of the division and on the division's Web site. An applicant must submit an application in writing to the attention of the division director at the office of the division.

(3) Content of application. The applicant must provide, at a minimum, the following information:

1. The name, business address, e-mail address, and telephone number of the applicant;
2. The applicant's business plan;
3. The county or counties in which the applicant intends to abstract;
4. A description of the applicant's abstracting experience;
5. Samples of abstracts prepared by the applicant;
6. A history of any professional disciplinary action against the applicant;
7. Professional references in support of the applicant;
8. The relevant facts that the applicant believes would justify a waiver under 9.7(1) "d"(5) and 9.7(1) "d"(6) "4"; and
9. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.

(4) Notification and response.

1. The division shall notify the applicant upon receipt of a complete application.
2. The division shall publish notice of an application on the division's Web site within 7 calendar days of receipt of a complete application. A copy of the application and supporting documents will be provided to any interested person upon request.

3. The Iowa State Bar Association and Iowa Land Title Association shall be provided notice of an application. Provision of the notice to the identified associations is not a requirement for the division board to consider the application, and failure to inform an interested person of an application shall not void or otherwise nullify any action or decision of the division board.

4. If a complete application is received at least 90 days prior to the next scheduled division board meeting, the application shall be placed on the agenda for that division board meeting. The division shall receive public comments up to 45 calendar days prior to that division board meeting.

(5) Criteria for title plant waiver. Pursuant to Iowa Code section 16.91(5) "b," the division board may issue a ruling waiving the title plant requirement set forth in Iowa Code section 16.91(5) "a"(2) if the board finds the following:

1. The title plant requirement imposes a hardship to the applicant; and
2. The waiver is:
 - Clearly in the public interest; or
 - Absolutely necessary to ensure availability of certificates throughout the state.
3. For purposes of paragraph 9.7(1) "d," "hardship" means deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances.

4. For purposes of paragraph 9.7(1) “d,” “public interest” means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of certificates throughout the state, making certificates more competitive than out-of-state title insurance, increasing the division’s market share, improving the quality of land titles, and protecting consumers.

(6) Board meeting and ruling.

1. The review of a waiver application is not a contested case proceeding.

2. The division director or designee shall review an application and its supporting documentation. The division director shall present to the division board a proposed written ruling. The division board shall adopt, amend or reject the proposed written ruling. If the proposed written ruling is rejected, the division board shall instruct the division director to prepare an alternative written ruling to be considered at a subsequent division board meeting.

3. The written ruling shall summarize the relevant facts and the basis for granting or denying the waiver. The written ruling may specify the scope and duration of the waiver and any restrictions, conditions, or requirements.

4. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division board upon consideration of all relevant factors. Relevant factors to be considered include, but are not limited to, the division director’s proposed written ruling, the facts and circumstances set out in the application, any history of professional disciplinary action against the applicant, adverse claims made against the applicant, prior waiver withdrawal actions against the participating attorney or participating abstractor, public comments, the professional knowledge and expertise of the board members and division staff, and any other resources available to the entire division board. The division board shall give considerable weight to an applicant’s experience abstracting under the supervision of a participating abstractor or participating attorney with whom the applicant has had a close working relationship or with whom the applicant is a partner or associate. The division board shall also give considerable weight to a recommendation from a participating abstractor or participating attorney who supervised the applicant’s abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant’s ability to abstract. Consideration should be afforded to rulings on prior waiver requests, but the division board shall not be bound by such rulings. The division board may limit a waiver as to county, or transaction type, or both.

5. The written ruling shall be mailed to the applicant within 7 days of its issuance.

6. The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(7) Conditions. A waiver is unique to the recipient and is nontransferable. A waiver recipient shall be accountable to the division for abstracts prepared for division purposes. The division may require a waiver recipient to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division may review the waiver recipient annually and may require a renewal, modification or addition to any required assurances. Retention of a waiver is dependent on the applicant’s meeting the requirements for a participant in rule 265—9.6(16). If the waiver recipient fails to meet the terms of the recipient’s participation agreement, the waiver may be withdrawn by the division board.

(8) Withdrawal of a waiver. A waiver issued by the division board may be withdrawn or modified if, after public notice and division board meeting, the division board issues a written ruling finding any of the following:

1. That the waiver recipient knowingly withheld or misrepresented material facts relied upon by the division board in granting the waiver; or

2. That the waiver recipient failed to comply with all conditions contained in the written ruling; or

3. That the abstracts prepared by the waiver recipient fail to meet the abstract minimum standards adopted by the division; or

4. That the division has revoked the waiver recipient’s authorization to provide services on behalf of the division pursuant to subrule 9.6(14).

The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(9) Public availability. Applications for waivers and written rulings are public records under Iowa Code chapter 22. Some applications or written rulings may contain information that the division is authorized or required to keep confidential. The division may redact confidential information from applications or written rulings prior to public inspection or dissemination.

9.7(2) Issuing title opinions.

a. All title opinions shall be prepared by participating attorneys and issued in compliance with division procedures as specified in manuals and any other written instructions given by the division.

b. A participating attorney who is a field issuer may issue a commitment as the preliminary title opinion and the certificate as the final title opinion.

c. A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

9.7(3) Issuing commitments and certificates. Pursuant to a participation agreement with the division, a participant may be authorized to issue a commitment or certificate on behalf of the division. A participant's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to terms of the participation agreement.

9.7(4) Issuing closing protection letters.

a. Pursuant to a participation agreement with the division, a participant may be authorized to issue a closing protection letter on behalf of the division.

b. The division may require the participating closer to provide an irrevocable letter of direction to the institution at which each escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary. [ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.8(16) Claims.

9.8(1) Claim procedures. In the event of a claim, the rights of the division and a party are as follows:

a. Upon receipt of notice by a party of a claim, the party must notify the division in writing within three business days of receipt of information about a claim by the party and shall mail notification to the division by first-class mail at the division's address as set forth in subrule 9.4(1). In addition, if the nature of the claim is such that the guaranteed claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by notice given more promptly than required by the preceding sentence, the party shall notify the division by telephone, facsimile transmission, e-mail, overnight mail or other overnight delivery service, or any combination of these methods.

b. When a party receives a request from the division for information with respect to a claim, the party shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, other writings, or other information known by or available to the party and relevant to the claim, even if not specifically requested by the division.

c. A party shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the party's attention with such promptness as the circumstances permit.

d. The division may, with or without prior notice to the party or parties involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable.

9.8(2) Claim loss recovery.

a. Any claim losses paid are recoverable from a party by the division.

b. In the absence of knowledge by the party about the title defect or other matter causing the claim loss, the division shall not seek recovery from the party when a claim loss arises from one or more of the following:

(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records, including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, manuals, and any other written instructions given by the division that the party relies upon in issuing an abstract, title opinion, commitment or certificate;

(4) Errors in surveys provided by registered Iowa land surveyors that the party relies upon in issuing a certificate that provides survey coverage; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract, title opinion, commitment, or certificate.

c. The party shall reimburse the division for a claim loss when the division determines, in accordance with paragraph 9.8(2) “d,” that the party is liable and when the claim loss arises from one or more of the following:

(1) Errors by the party in the preparation of an abstract or any other report of information in the public record;

(2) Reliance by the party upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the party in examining the title information provided in an abstract, survey, affidavit, or other source of title information;

(4) Errors made by the party in the preparation or review of an abstract, title opinion, commitment or certificate;

(5) Issuance of an abstract, title opinion, commitment or certificate by the party with knowledge that title is defective; or

(6) Failure of the party to follow the Code of Iowa, these rules, manuals, or any other written instructions given by the division.

d. Unless another rule, the Code of Iowa, manuals, or any other written instruction given by the division provides for a different standard of liability or other rule for determining whether the party shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) “c”(1), the division may demand reimbursement from the party if the party was grossly negligent in preparing the abstract. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the party upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the party.

(2) In the event that a claim loss occurs for which the division may seek recovery from a party under subparagraph 9.8(2) “c”(2), the division may demand reimbursement from that party if the party relied upon sources of abstracts or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) “c”(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a commitment or certificate.

1. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the party has failed to meet the standard of skill and competence of an abstractor who prepares an abstract or an attorney who examines titles in the community where the claim arose.

2. The division may also consider whether the party followed the Code of Iowa, these rules, manuals, or any other written instructions given by the division in examining the title.

3. In addition, the division may seek input from other parties in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract or of an attorney who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) “c”(4), the division may demand reimbursement from the party if the party negligently prepared or reviewed an abstract, title opinion, commitment or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) “c”(5), the division may demand reimbursement from the party if the issuance of the abstract, title opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract, title opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) “c”(6), the division may demand reimbursement from the party if the party failed to follow the Code of Iowa, these rules, manuals, or any other written instructions given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a party, the division shall state the basis of the reimbursement.

e. The division board may establish levels of authority, including dollar amounts, for the division for the settlement of claims made against the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.9(16) Mortgage release certificate. Pursuant to Iowa Code section 16.92, the division is charged with the administration of a program to release, after proper notification, paid-off mortgages from real estate titles in Iowa by executing and filing with the county recorder a mortgage release certificate.

9.9(1) Application. The division shall provide a mortgage release application at the office of the division and on the division’s Web site. The following may submit an application for a mortgage release certificate:

- a.* A person authorized to regularly lend moneys to be secured by a mortgage on real property in Iowa.
- b.* A licensed real estate broker.
- c.* A licensed attorney.
- d.* A participating abstractor.
- e.* A licensed closing agent.

9.9(2) Application fee. An applicant may be required to pay a fee to apply for a mortgage release certificate. The fee shall be set by the division.

9.9(3) Maximum principal amount of mortgage. The division board may set a maximum principal amount for mortgages that may be released by a mortgage release certificate.

9.9(4) Authority to sign certificate. A mortgage release certificate shall be executed by the division director or designee of the division director.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.10(16) Rules of construction. In this chapter, the following rules of construction shall be observed:

1. The word “shall” means mandatory and not permissive and the word “may” means permissive and not mandatory.

2. Nothing contained in this chapter shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other person.

3. Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other remedies or sanctions under this chapter, or otherwise against a participant or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.

4. The failure of the division to enforce a right or remedy under this chapter, a statute, or common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

265—9.11(16) Seal. The division shall have a corporate seal that may be altered by the division from time to time.

[ARC 2506C, IAB 4/27/16, effective 6/1/16; see Delay note at end of chapter]

These rules are intended to implement Iowa Code sections 16.2A, 16.4C, 16.5, 16.90 to 16.94, 17A.3, 17A.9, 17A.10 and 535.8(10).

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[Filed ARC 2506C (Notice ARC 2128C, IAB 9/2/15), IAB 4/27/16, effective 6/1/16]²

[◇] Two or more ARCs

¹ Effective date of 9.7(2), definition of “Title plant” delayed 70 days by the Administrative Rules Review Committee at its meeting held December 9, 2008.

² June 1, 2016, effective date of the rescission of former 9.1 to 9.22 and the adoption of new 9.1 to 9.11 [ARC 2506C] delayed until the adjournment of the 2017 General Assembly by the Administrative Rules Review Committee at its meeting held May 10, 2016.

REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, chapter 1245.

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[Prior to 12/17/86, Revenue Department[730]]

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80.1(1) *Application for credit.*

a. No homestead tax credit shall be allowed unless the first application for homestead tax credit is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year. (1946 O.A.G. 37) Once filed, the claim for credit is applicable to subsequent years and no further filing shall be required provided the homestead is owned and occupied by the claimant or the claimant's spouse on July 1 of each year and, in addition, the claimant or the claimant's spouse occupies the homestead for at least six months during each calendar year in which the fiscal year for which the credit is claimed begins. It is not a requirement that the six-month period of time be consecutive. If the credit is disallowed and the claimant failed to give written notice to the assessor that the claimant ceased to use the property as a homestead, a civil penalty equal to 5 percent of the amount of the disallowed credit shall be assessed against the claimant in addition to the amount of credit allowed. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 425.3. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the homestead tax credit may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for homestead tax credit. If it is the opinion of the assessor that a homestead tax credit should not be allowed, the assessor shall accept the application for credit and recommend disallowance.

e. If the owner of the homestead is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for homestead tax credit may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

f. If a person makes a false application for credit with fraudulent intent to obtain the credit, the person is guilty of a fraudulent practice and the claim shall be disallowed. If the credit has been paid, the amount of the credit plus a penalty equal to 25 percent of the amount of the disallowed credit and interest shall be collected by the county treasurer.

g. For purposes of the homestead tax credit statute, the occupancy of the homestead may constitute actual occupancy or constructive occupancy. However, more than one homestead cannot be simultaneously occupied by the claimant and multiple simultaneous homestead tax credits are not allowable. (Op. St. Bd. Tax Rev. No. 212, February 29, 1980.) Generally, a homestead is occupied by the claimant if the premises constitute the claimant's usual place of abode. Once the claimant's occupancy of the homestead is established, such occupancy is not lost merely because the claimant, for some valid reason, is temporarily absent from the homestead premises with an intention of returning thereto (1952 O.A.G. 78).

80.1(2) *Eligibility for credit.*

a. If homestead property is owned jointly by persons who are not related or formerly related by blood, marriage or adoption, no homestead tax credit shall be allowed unless all the owners actually occupy the homestead property on July 1 of each year. (1944 O.A.G. 26; Letter O.A.G. October 18, 1941)

b. No homestead tax credit shall be allowed if the homestead property is owned or listed and assessed to a corporation, other than a family farm corporation, partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441; *Verne Deskin v. Briggs*, State Board of Tax Review, No. 24, February 1, 1972)

c. A person acquiring homestead property under a contract of purchase remains eligible for a homestead tax credit even though such person has assigned his or her equity in the homestead property as security for a loan. (1960 O.A.G. 263)

d. A person occupying homestead property pursuant to Iowa Code chapter 499A or 499B is eligible for a homestead tax credit. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

e. A person who has a life estate interest in homestead property shall be eligible for a homestead tax credit, provided the remainderman is related or formerly related to the life estate holder by blood, marriage or adoption or the reversionary interest is held by a nonprofit corporation organized under Iowa Code chapter 504A. (1938 O.A.G. 193)

f. A homestead tax credit may not be allowed upon a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

g. A person occupying homestead property under a trust agreement is considered the owner of the property for purposes of the homestead tax credit. (1962 O.A.G. 434)

h. A remainder is not eligible to receive a homestead tax credit until expiration of the life estate to which such person has the remainder interest. (1938 O.A.G. 305)

i. In order for a person occupying homestead property under a contract of purchase to be eligible for a homestead tax credit, the contract of purchase must be recorded in the office of the county recorder where the property is located. A recorded memorandum or summary of the actual contract of purchase is not sufficient evidence of ownership to qualify a person for a homestead tax credit.

j. An owner of homestead property who is in the military service or confined in a nursing home, extended-care facility or hospital shall be considered as occupying the property during the period of service or confinement. The fact that the owner rents the property during the period of military service is immaterial to the granting of the homestead tax credit. (1942 O.A.G. 45) However, no homestead tax credit shall be allowed if the owner received a profit for the use of the property from another person while such owner is confined in a nursing home, extended-care facility or hospital.

k. A person owning a homestead dwelling located upon land owned by another person or entity is not eligible for a homestead tax credit. (1942 O.A.G. 160, O.A.G. 82-4-9) This rule is not applicable to a person owning a homestead dwelling pursuant to Iowa Code chapter 499B or a person owning a homestead dwelling on land owned by a community land trust pursuant to 42 U.S.C. Section 12773.

l. An heir occupying homestead property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the homestead credit. (1938 O.A.G. 272)

80.1(3) Disabled veteran's homestead tax credit.

a. *Qualification for credit.* The disabled veteran tax credit may be claimed by any of the following owners of homestead property:

(1) A veteran who acquired homestead property under 38 U.S.C. Sections 21.801 and 21.802 or Sections 2101 and 2102.

(2) A veteran, as defined in Iowa Code section 35.1, with a permanent service-connected disability rating of 100 percent, as certified by the U.S. Department of Veterans Affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the 100 percent disability rate, as certified by the U.S. Department of Veterans Affairs.

(3) A former member of the national guard of any state who otherwise meets the service requirements of Iowa Code section 35.1(2) "b"(2) or 35.1(2) "b"(7), with a permanent service-connected disability rating of 100 percent, as certified by the U.S. Department of Veterans Affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the 100 percent disability rate, as certified by the U.S. Department of Veterans Affairs.

(4) An individual who is a surviving spouse or a child and who is receiving dependency and indemnity compensation pursuant to 38 U.S.C. Section 1301 et seq., as certified by the U.S. Department of Veterans Affairs.

b. *Application for credit.* Except for the 2014 assessment year, an application for the disabled veteran tax credit must be filed with the local assessor on or before July 1 of the assessment year. Any supporting documentation required by the assessor must be current within the previous 12 months of the date on which the application is filed. The filing deadline for applications for the 2014 assessment year

shall be July 1, 2015. The credit applicable to assessment year 2014 shall be allowed only on a homestead which the owner occupied on July 1, 2014, and for at least six months during the 2014 assessment year.

c. Amount of credit. The amount of the credit is equal to the entire amount of tax payable on the homestead.

d. Continuance of credit. The credit shall continue to the estate or surviving spouse and child who are the beneficiaries of an owner described in subparagraph 80.1(3)“a”(1), (2), or (3) if the surviving spouse remains unmarried. If an owner or beneficiary of an owner ceases to qualify for the credit, the owner or beneficiary must notify the assessor of the termination of eligibility.

80.1(4) Application of credit.

a. Except as provided in 80.1(1)“a,” if the homestead property is conveyed to another person prior to July 1 of any year, the new owner must file a claim for credit on or before July 1 to obtain the credit for that year. If the property is conveyed on or after July 1, the credit shall remain with the property for that year provided the previous owner was entitled to the credit. However, when the property is transferred as part of a distribution made pursuant to Iowa Code chapter 598 (Dissolution of Marriage) the transferee spouse retaining ownership and occupancy of the homestead is not required to refile for the credit.

b. A homestead tax credit may be allowed even though the property taxes levied against the homestead property have been suspended by the board of supervisors. (1938 O.A.G. 288)

c. A homestead tax credit shall not be allowed if the property taxes levied against the homestead property have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

d. Only one homestead tax credit can be allowed per legally described tract of land. For purposes of this rule, a legally described tract of land shall mean all land contained in a single legal description. (1962 O.A.G. 435)

e. If the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission*, 235 Iowa 222, 16 N.W.2d 215)

f. If the homestead property contains two dwelling houses and one of the dwelling houses and a portion of the land is sold after a valid application for homestead tax credit has been filed, the assessor shall prorate the assessment so as to allow the seller a homestead tax credit on that portion of the property which is retained and also allow the purchaser a homestead tax credit on that portion of the property which is purchased, provided the purchaser files a valid application for homestead tax credit by July 1 of the claim year.

g. A homestead tax credit shall be allowed against the assessed value of the land on which a dwelling house did not exist as of January 1 of the year in which the credit is claimed provided a dwelling house is owned and occupied by the claimant on July 1 of that year.

h. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the credit estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code chapter 425 as amended by 2006 Iowa Acts, House File 2794.

[ARC 2507C, IAB 4/27/16, effective 6/1/16]

701—80.2(22,35,426A) Military service tax exemption.

80.2(1) Application for exemption.

a. No military service tax exemption shall be allowed unless the first application for the military service tax exemption is signed by the owner of the property or the owner’s qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year (1970 O.A.G. 437). Once filed, the claim for exemption is applicable to subsequent years and no further filing shall be required provided the claimant or the claimant’s spouse owns the property on July 1 of each year. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 426A.14. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the military service tax exemption may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for a military service tax exemption. If it is the opinion of the assessor that a military service tax exemption should not be allowed, the assessor shall accept the application for exemption and recommend disallowance.

e. If the owner of the property is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for military service tax exemption may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

80.2(2) Eligibility for exemption.

a. A person who was discharged from the draft is not considered a veteran of the military service and is not entitled to a military service tax exemption. (1942 O.A.G. 79)

b. A military service tax exemption shall not be allowed to a person whose only service in the military was with a foreign government. (1932 O.A.G. 242; 1942 O.A.G. 79)

c. Former members of the United States armed forces, including members of the Coast Guard, who were on active duty for less than 18 months must have served on active duty during one of the war or conflict time periods enumerated in Iowa Code Supplement section 35.1. If former members were on active duty for at least 18 months, it is not necessary that their service be performed during one of the war or conflict time periods. Former members who opted to serve five years in the reserve forces of the United States qualify if any portion of their enlistment would have occurred during the Korean Conflict (June 25, 1950, to January 31, 1955). There is no minimum number of days a former member of the armed forces of the United States must have served on active duty if the service was performed during one of the war or conflict time periods, nor is there a minimum number of days a former member of the armed forces of the United States must have served on active duty if the person was honorably discharged because of a service-related injury sustained while on active duty.

Former and current members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.

d. With the exception of members of the Iowa national guard and members of the reserve forces of the United States who have served at least 20 years and continue to serve, a military service tax exemption shall not be allowed unless the veteran has received a complete and final separation from active duty service. (*Jones v. Iowa State Tax Commission*, 247 Iowa 530, 74 N.W.2d 563, 567-1956; *In re Douglas A. Coyle*, State Board of Tax Review, No. 197, August 14, 1979; 1976 O.A.G. 44)

e. As used in Iowa Code subsection 426A.12(3), the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.

f. A veteran of more than one qualifying war period is entitled to only one military service tax exemption, which shall be the greater of the two exemptions. (1946 O.A.G. 71)

g. The person claiming a military service tax exemption must be an Iowa resident. However, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified individual enumerated in Iowa Code section 426A.12. (1942 O.A.G. 140)

h. A person who has a life estate interest in property may claim a military service tax exemption on such property. (1946 O.A.G. 155; 1976 O.A.G. 125)

i. A remainder is not eligible to receive a military service tax exemption on property to which a remainder interest is held until expiration of the life estate. (1946 O.A.G. 155)

j. A military service tax exemption shall not be allowed on a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

k. A divorced person may not claim the military service tax exemption of a former spouse who qualifies for the exemption. (Letter O.A.G. August 8, 1961)

l. A surviving spouse of a qualified veteran, upon remarriage, loses the right to claim the deceased veteran's military exemption as the surviving spouse is no longer an unremarried surviving spouse of the qualified veteran. (1950 O.A.G. 44)

m. An annulled marriage is considered to have never taken place and the parties to such a marriage are restored to their former status. Neither party to an annulled marriage can thereafter be considered a spouse or surviving spouse of the other party for purposes of receiving the military service tax exemption. (Op. Att'y. Gen. 61-8-10(L))

n. No military service tax exemption shall be allowed on property that is owned by a corporation, except for a family farm corporation where a shareholder occupies a homestead as defined in Iowa Code section 425.11(1), partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441)

o. In the event both a husband and wife are qualified veterans, they may each claim their military service tax exemption on their jointly owned property. (1946 O.A.G. 154) If property is solely owned by one spouse, the owner spouse may claim both exemptions on the property providing the nonowner spouse's exemption is not claimed on other property.

p. No military service tax exemption shall be allowed if on July 1 of the claim year, the claimant or the claimant's unremarried surviving spouse is no longer the owner of the property upon which the exemption was claimed.

q. A person shall not be denied a military service tax exemption even though the property upon which the exemption is claimed has been pledged to another person as security for a loan. (1960 O.A.G. 263)

r. A qualified veteran who has conveyed property to a trustee shall be eligible to receive a military service tax exemption on such property providing the trust agreement gives the claimant a beneficial interest in the property. (1962 O.A.G. 434)

s. A person owning property pursuant to Iowa Code chapter 499A or 499B is eligible for a military service tax exemption. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

t. The person claiming the exemption shall have recorded in the office of the county recorder evidence of property ownership and either the military certificate of satisfactory service or, for a current member of the Iowa national guard or a member of the reserve forces of the United States, the veteran's retirement points accounting statement issued by the armed forces of the United States or the state adjutant general. The military certificate of satisfactory service shall be considered a confidential record pursuant to Iowa Code section 22.7.

u. An heir of property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the military exemption.

80.2(3) Application of exemption.

a. When the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission*, 235 Iowa 222, 16 N.W.2d 215)

b. If a portion of the property upon which a valid military service tax exemption was claimed is sold on or before July 1 of the year in which the exemption is claimed, the seller shall be allowed a military service tax exemption on that portion of the property which is retained by the seller on July 1. The purchaser is also eligible to receive a military service tax exemption on that portion of the property which was purchased, provided the purchaser is qualified for the exemptions and files a valid application for the exemption on or before July 1 of the claim year.

c. A military service tax exemption may be allowed even though the taxes levied on the property upon which the exemption is claimed have been suspended by the board of supervisors. (1938 O.A.G. 288)

d. A military service tax exemption shall not be allowed if the taxes levied on the property upon which the exemption is claimed have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

e. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the exemption estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code sections 22.7, 35.1, and 35.2 and chapter 426A. [ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.3(427) Pollution control and recycling property tax exemption.

80.3(1) To secure an exemption for pollution control or recycling property, an application must be filed with the assessing authority on or before February 1 of the assessment year for which the exemption is first claimed. It is the responsibility of the taxpayer to secure the necessary certification from the department of natural resources in sufficient time to file the application for exemption with the assessing authority on or before February 1. An exemption for new pollution control or recycling property can be secured by filing an application with the assessing authority by February 1 of the assessment year following the year in which the property is installed or constructed. If no application is timely filed in that year, the property will first qualify for exemption in any subsequent year in which an application is filed with the assessing authority on or before February 1.

80.3(2) In the event February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

80.3(3) In the event February 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

80.3(4) No exemption shall be allowed unless the application is signed by the owner of the property or the owner's qualified designee.

80.3(5) An assessor may not refuse to accept an application for a pollution control exemption if timely filed and if the necessary certification has been obtained from the department of natural resources.

80.3(6) The sale, transfer, or lease of property does not affect its eligibility for exemption as long as the requirements of Iowa Code subsection 427.1(19) and rule 701—80.3(427), Iowa Administrative Code, are satisfied.

80.3(7) No exemption shall be allowed unless the department of natural resources has certified that the primary use of the property for which the taxpayer is seeking an exemption is to control or abate air or water pollution or to enhance the quality of any air or water in this state or that the primary use of the property is for recycling. Recycling property is property used primarily in the manufacturing process and resulting directly in the conversion of waste glass, waste plastic, wastepaper products, waste paperboard, or waste wood products into new raw materials or products composed primarily of recycled material.

80.3(8) In the event that qualified property is assessed as a unit with other property not having a pollution control or recycling function, the exemption shall be limited to the increase in the assessed valuation of the unit which is attributable to the pollution control or recycling property.

EXAMPLE

Valuation of unit with pollution control or recycling property	\$100,000
Valuation of unit without pollution control or recycling property	<u>50,000</u>
Allowable amount of exemption	\$ 50,000

80.3(9) The value of property to be exempt from taxation shall be the fair and reasonable market value of such property as of January 1 of each year for which the exemption is claimed, rather than the original cost of such property.

80.3(10) An assessor shall not exempt property from taxation without first assessing the property for taxation and subsequently receiving an application for tax exemption from the taxpayer.

This rule is intended to implement Iowa Code Supplement section 427.1(19) as amended by 2006 Iowa Acts, House File 2633, and Iowa Code sections 427.1(18) and 441.21(1)(i).
[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.4(427) Low-rent housing for the elderly and persons with disabilities.

80.4(1) As used in Iowa Code subsection 427.1(21), the term “nonprofit organization” means an organization, no part of the net income of which is distributable to its members, directors or officers.

80.4(2) As used in Iowa Code subsection 427.1(21), the term “low-rent housing” means housing the rent for which is less than that being received or which could be received for similar properties on the open market in the same assessing jurisdiction. Federal rent subsidies received by the occupant shall be excluded in determining whether the rental fee charged meets this definition.

80.4(3) As used in Iowa Code subsection 427.1(21), the term “elderly” means any person at least 62 years of age.

80.4(4) As used in Iowa Code subsection 427.1(21), the term “persons with physical or mental disabilities” means a person whose physical or mental condition is such that the person is unable to engage in substantial gainful employment.

80.4(5) The exemption granted in Iowa Code subsection 427.1(21) extends only to property which is owned and operated, or controlled, by a nonprofit organization recognized as such by the Internal Revenue Service. Property owned and operated, or controlled, by a private person is not eligible for exemption under Iowa Code subsection 427.1(21).

80.4(6) The income of persons living in housing eligible for exemption under Iowa Code subsection 427.1(21) shall not be considered in determining the property’s taxable status.

80.4(7) An organization seeking an exemption under Iowa Code subsection 427.1(21) shall file a statement with the local assessor pursuant to Iowa Code subsection 427.1(14).

80.4(8) The exemption authorized by Iowa Code subsection 427.1(21) extends only until the final payment due date of the borrower’s original low-rent housing development mortgage on the property or until the borrower’s original low-rent housing development mortgage is paid in full or expires, whichever is sooner. If the original mortgage is refinanced, the exemption shall apply only until what would have been the final payment due date under the original mortgage or until the refinanced mortgage is paid in full or expires, whichever is sooner. This exemption for refinanced projects applies to those projects refinanced on or after January 1, 2005.

80.4(9) In complying with the requirements of Iowa Code subsection 427.1(14), the provisions of rule 701—78.4(427) shall apply.

80.4(10) In determining the taxable status of property for which an exemption is claimed under Iowa Code subsection 427.1(21), the appropriate assessor shall follow rules 701—78.1(427,441) to 701—78.5(427).

80.4(11) If a portion of a structure is used to provide low-rent housing units to elderly persons and persons with disabilities and the other portion is used to provide housing to persons who are not elderly or disabled, the exemption for the property on which the structure is located shall be limited to that portion of the structure used to provide housing to the elderly and disabled. Vacant units and projects under construction that are designated for use to provide housing to elderly and disabled persons shall be considered as being used to provide housing to elderly and disabled persons. The valuation exempted shall bear the same relationship to the total value of the property as the area of the structure used to provide low-rent housing for the elderly and persons with disabilities bears to the total area of the structure unless a better method for determining the exempt valuation is available. The valuation of the land shall be exempted in the same proportion.

80.4(12) The property tax exemption provided in Iowa Code subsection 427.1(21) shall be based upon occupancy by elderly or persons with disabilities as of July 1 of the assessment year. However,

nothing in this subrule shall prevent the taxation of such property in accordance with the provisions of Iowa Code section 427.19.

This rule is intended to implement Iowa Code section 427.1(14) and Supplement section 427.1(21). [ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.5(427) Speculative shell buildings.

80.5(1) *Authority of city council and board of supervisors.* A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction of speculative shell buildings or additions to existing buildings or structures, or may exempt the value of an existing building or structure being reconstructed or renovated and the value of the land on which the building or structure is located, if the reconstruction or renovation constitutes complete replacement or refitting of an existing building or structure owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419, for definitions. The value added exemption for new construction includes reconstruction and renovation constituting complete replacement or refitting of existing buildings and structures if the reconstruction or renovation is required due to economic obsolescence, or to implement industry standards in order to competitively manufacture or process products, or to market a building or structure as a speculative shell building. The exemption for reconstruction or renovation not constituting new construction does not have to meet these requirements but has to meet only the requirements set forth in the definition of a speculative shell building. The council or board in the ordinance authorizing the exemption shall specify if the exemption will be allowed to community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499B, or for-profit entities, and the length of time the exemption is to be allowed.

80.5(2) *Eligibility for exemption.* The value added by new construction, reconstruction, or renovation and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a tax exemption becomes effective is not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect on February 1 of that calendar year. This subrule does not apply to new construction projects having received prior approval. For reconstruction and renovation projects not constituting new construction, the ordinance authorizing the exemption must be in effect by February 1 of the year the project commences for the exemption to be allowable in the subsequent assessment year.

80.5(3) *Application for exemption.*

a. A community development organization, not-for-profit cooperative association, or for-profit entity must file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year in which the value added for new construction is first assessed for the exemption to be allowable for that assessment year. For reconstruction and renovation projects not constituting new construction, an application for exemption must be filed by February 1 of the assessment year in which the project commences for the exemption to be allowable the following assessment year. If approved, no application for exemption is required to be filed in subsequent years for the value added exemption or the reconstruction or renovation exemption not constituting new construction. An application cannot be filed if a valid ordinance has not been enacted. If an application is not filed by February 1 of the year in which the value added for new construction is first assessed, the organization, association, or entity cannot receive, in subsequent years, the exemption for that value added. However, if the organization, association, or entity has received prior approval, the application must be filed by February 1 of the year in which the total value added for the new construction is first assessed.

b. If February 1 falls on either a Saturday or Sunday, applications for exemption may be filed the following Monday.

c. Applications submitted by mail must be accepted if postmarked on or before February 1 or, if February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday is acceptable.

80.5(4) *Prior approval.* To obtain prior approval for a project, the proposal of the organization, association, or entity must be approved by a specific ordinance addressing the proposal and passed by

the city council or board of supervisors. The original ordinance providing for the exemption does not constitute the granting of prior approval for a project. If an organization, association, or entity has obtained a prior approval ordinance from a city council or board of supervisors, the exemption for new construction cannot be obtained until the year in which all value added for the completed project is first assessed. Reconstruction and renovation projects constituting new construction must receive prior approval to qualify for exemption. Reconstruction and renovation projects that do not constitute new construction need not receive prior approval.

80.5(5) *Termination of exemption.* The exemption continues until the property is leased or sold, the time period for the exemption specified in the ordinance elapses, or the exemption is terminated by ordinance of the city council or board of supervisors. If the ordinance authorizing the exemption is repealed, all existing exemptions continue until their expiration and any projects having received prior approval for exemption for new construction are to be granted an exemption upon completion of the project. If the shell building or any portion of the shell building is leased or sold, the exemption for new construction shall not be allowed on that portion of the shell building leased or sold in subsequent years. If the shell building or any portion of the shell building is leased or sold, the exemption for reconstruction or renovation not constituting new construction shall not be allowed on that portion of the shell building leased or sold and a proportionate share of the land on which the shell building is located in subsequent years.

This rule is intended to implement Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419.

701—80.6(427B) Industrial property tax exemption.

80.6(1) *Authority of city council and board of supervisors.* A partial exemption ordinance enacted pursuant to Iowa Code section 427B.1 shall be available to all qualifying property. A city council or county board of supervisors does not have the authority to enact an ordinance granting a partial exemption to only certain qualifying properties (1980 O.A.G. 639). As used in this rule, the term “qualifying property” means property classified and assessed as real estate pursuant to 701—subrule 71.1(6), warehouses and distribution centers, research service facilities, and owner-operated cattle facilities. “Warehouse” means a building or structure used as a public warehouse for the storage of goods pursuant to Iowa Code sections 554.7101 to 554.7603, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. “Distribution center” means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. Distribution center does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods. A “research service facility” is one or more buildings devoted primarily to research and development activities or corporate research services. Research and development activities include, but are not limited to, the design and production or manufacture of prototype products for experimental use. A research service facility does not have as its primary purpose the providing of on-site services to the public. “Owner-operated cattle facility” means a building or structure used primarily in the raising of cattle and which is operated by the person owning the facility.

80.6(2) *Prior approval.* Only upon enactment of a partial property tax exemption ordinance in accordance with Iowa Code section 427B.1 may a city council or board of supervisors enact a prior approval ordinance for pending individual projects in accordance with Iowa Code section 427B.4. To obtain prior approval for a project, a property owner’s proposal must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the partial exemption does not constitute the granting of prior approval for a project. Also, prior approval for a project can only be granted by ordinance of the city council or board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project. If a taxpayer has obtained a prior approval ordinance from a city council or board of supervisors, the partial exemption cannot be obtained until the year in which all value added for the project is first assessed. (1980 O.A.G. 639)

80.6(3) *Repeal of ordinance.* A new construction project having received prior approval for exemption in accordance with subrule 80.6(2) shall be granted such exemption upon completion of the project even if the city council or board of supervisors subsequently repeals the ordinance passed in accordance with Iowa Code section 427B.1. (1980 O.A.G. 639)

80.6(4) *Annexation of property previously granted exemption.* A partial property tax exemption which has been granted and is in existence shall not be discontinued or disallowed in the event that the property upon which such exemption has been previously granted is located in an area which is subsequently annexed by a city or becomes subject to the jurisdiction of a county in which an ordinance has not been passed by the city council or county board of supervisors allowing such exemptions within that jurisdiction. The existing exemption shall continue until its expiration.

80.6(5) *Eligibility for exemption.*

a. The value added by new construction or reconstruction and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a partial property tax exemption becomes effective, and new machinery and equipment assessed as real estate acquired and utilized prior to January 1 of the calendar year in which the ordinance or resolution becomes effective, are not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect prior to February 1 of that calendar year and if all other eligibility and application requirements are satisfied.

EXAMPLE 1: A \$1,000,000 new construction project on qualifying property is begun in July 1984. \$500,000 in value of the partially completed project is completed in 1984 and first assessed as of January 1, 1985. The project is completed in 1985 adding an additional value of \$500,000 which is first assessed as of January 1, 1986, bringing the total assessed value of the completed project to \$1,000,000 as of the January 1, 1986, assessment.

A city ordinance authorizing the partial exemption program is passed and becomes effective January 15, 1987. This project is not eligible for a property tax exemption for any value added as a result of the new construction project.

EXAMPLE 2: Assuming the same factual situation as in Example 1, except that the ordinance authorizing the partial exemption program becomes effective on January 15, 1986, the \$500,000 in assessed value added as of the January 1, 1986, assessment is eligible for the partial exemption if an application is filed with the assessor between January 1 and February 1, 1986, inclusive.

EXAMPLE 3: Assuming the same factual situation as in Example 1, except that the ordinance authorizing the partial exemption program becomes effective on February 15, 1986. Since the statutory application filing deadline is February 1, no value added and first assessed as of January 1, 1986, is eligible for a partial exemption. The project in this example would receive no exemption for any value added as a result of the new construction.

This subrule does not apply to new construction projects having received prior approval in accordance with subrule 80.6(2).

b. New machinery and equipment assessed as real estate shall be eligible for partial exemption only if used primarily in the manufacturing process. For example, computer equipment used primarily to maintain payroll records would not be eligible for exemption, whereas computer equipment utilized primarily to control or monitor actual product assembly would be eligible.

c. If any other property tax exemption is granted for the same assessment year for all or any of the property which has been granted a partial exemption, the partial property tax exemption shall be disallowed for the year in which the other exemption is actually received.

d. Only qualifying property is eligible to receive the partial property tax exemption (O.A.G. 81-2-18).

e. A taxpayer cannot receive the partial property tax exemption for industrial machinery or equipment if the machinery or equipment was previously assessed in the state of Iowa. Industrial machinery and equipment previously used in another state may qualify for the partial exemption if all criteria for receiving the partial exemption are satisfied.

f. Industrial machinery and equipment is eligible to receive the partial property tax exemption if it changes the existing operational status other than by merely maintaining or expanding the existing

operational status. This rule applies whether the machinery and equipment is placed in a new building, an existing building, or a reconstructed building. If new machinery is used to produce an existing product more efficiently or to produce merely a more advanced version of the existing product, the existing operational status would only be maintained or expanded and the machinery would not be eligible for the exemption. However, if the new machinery produces a product distinctly different from that currently produced, the existing operational status has been changed.

80.6(6) *Application for exemption.*

a. An eligible property owner shall file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year for which the value added is first assessed for tax purposes. The amount of “actual value added” shall be the difference between the assessed value of the property on January 1 of the year value is added to the property and the assessed value of the property the following assessment year. An application cannot be filed if a valid ordinance has not been enacted in accordance with Iowa Code section 427B.1 (O.A.G. 82-3-5). If an application is not filed by February 1 of the year for which the value added is first assessed, the taxpayer cannot receive in subsequent years the partial exemption for that value added (O.A.G. 82-1-17). However, if a taxpayer has received prior approval in accordance with Iowa Code section 427B.4 and subrule 80.6(2), the application is to be filed by not later than February 1 of the year for which the total value added is first assessed as the approved completed project.

b. In the event that February 1 falls on either a Saturday or Sunday, applications for the industrial property tax exemption may be filed the following Monday.

c. Applications submitted by mail shall be accepted if postmarked on or before February 1, or in the event that February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday shall be accepted.

80.6(7) *Change in use of property.* If property ceases to be used as qualifying property, no partial exemption shall be allowed as of January 1 of the year following the calendar year in which the change in use takes place or for subsequent years. If property under construction ceases to be constructed for use as qualifying property, no partial exemption shall be allowed as of January 1 of the year following the calendar year in which this cessation occurs. However, such a change in the use of the property does not affect the validity of any partial exemption received for the property while it was used or under construction as qualifying property.

This rule is intended to implement Iowa Code sections 427B.1 to 427B.7.
[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.7(427B) Assessment of computers and industrial machinery and equipment.

80.7(1) Computers and industrial machinery and equipment are to be assessed at 30 percent of the property’s net acquisition cost through the 1998 assessment year, 22 percent of the net acquisition cost in the 1999 assessment year, 14 percent of the net acquisition cost in the 2000 assessment year, and 6 percent of the net acquisition cost in the 2001 assessment year. The property will be exempt from tax beginning with the 2002 assessment year.

Computers and industrial machinery and equipment acquired after December 31, 1993, and not previously assessed in Iowa, are exempt from tax.

Computers and industrial machinery and equipment assessed pursuant to Iowa Code section 427B.17 are not eligible to receive the partial property tax exemption under Iowa Code sections 427B.1 to 427B.7.

80.7(2) Computers assessed under Iowa Code section 427A.1(1) “j” are limited to the percent of the computer’s net acquisition cost as provided in Iowa Code section 427B.17 regardless of the classification of the real estate in which the computer is located.

80.7(3) For computers and industrial machinery and equipment, the net acquisition cost shall be the acquired cost of the property.

80.7(4) Computation of taxpayer’s value. Assume a machine is acquired at a net acquisition cost of \$10,000. Assume also that the actual depreciated value of the machine is \$9,000. The value on which taxes would be levied would be limited to \$3,000 ($\$10,000 \times .30$). This percent will change over the course of the phaseout of the tax.

80.7(5) If all or a portion of the value of property assessed pursuant to Iowa Code section 427B.17 is eligible to receive an exemption from taxation, the amount of value to be exempt shall be subtracted from the net acquisition cost of the property before the taxpayer's value prescribed in Iowa Code section 427B.17 is determined. For example, if property has a net acquisition cost of \$30,000 and is eligible to receive a pollution exemption for \$15,000 of value, the taxable net acquisition cost would be \$15,000 and the taxpayer's value would be \$4,500 ($\$15,000 \times .30$). This percent will change over the course of the phaseout of the tax.

80.7(6) In the event the actual depreciated fair market value of property assessed pursuant to Iowa Code section 427B.17 is less than the valuation determined as a percent of the net acquisition cost of the property as provided in Iowa Code section 427B.17, the taxpayer's assessed value would be equal to the actual depreciated fair market value of the property.

80.7(7) Property ineligible for phaseout and exemption. Computers and industrial machinery and equipment, the taxes on which are used to fund a new jobs training project approved on or before June 30, 1995, do not qualify for the exemption provided in Iowa Code section 427B.17(2) nor the phaseout contained in Iowa Code section 427B.17(3) until the assessment year following the calendar year in which the funding obligations have been retired, refinanced, or refunded. At that time, the property will be subject to phaseout if acquired prior to January 1, 1994, or exempt from tax if acquired after December 31, 1993, and not previously assessed in Iowa. See subrule 80.7(1). The community college must notify the assessor by February 15 of each assessment year if the community college will be using a taxpayer's machinery and equipment taxes to finance a project that year. In any year in which the community college does rely on a taxpayer's machinery and equipment taxes for funding, the phaseout and exemption will not apply to that taxpayer that year.

80.7(8) County replacement.

a. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If there is an increase in valuation (the January 1, 1994, value is less), there will be no replacement for that fiscal year.

b. For fiscal years beginning July 1, 2001, and ending June 30, 2004, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, less, if any, the increase in the assessed value of commercial and industrial property as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If the calculation results in a negative amount, there will be no replacement for that fiscal year.

c. The replacement amounts shall be determined for each taxing district and a replacement claim summarizing the total amounts for the county prepared and submitted by the county auditor to the department of revenue by September 1 of each year. The department shall pay the replacement amount to the county treasurer in September and March of each year.

d. No replacement is allowable if a community college elects not to fund a new jobs training project with a tax on computers and industrial machinery and equipment.

This rule is intended to implement Iowa Code chapter 427B as amended by 2003 Iowa Acts, Senate File 453.

701—80.8(404) Urban revitalization partial exemption.

80.8(1) *Area designated.* An area containing only one building or structure cannot be designated as an urban revitalization area (1980 O.A.G. 786).

80.8(2) *Prior approval.* To obtain prior approval for a project, a property owner's proposal must be approved by a specific resolution addressing the proposal and passed by the city council or county board of supervisors. The original ordinance providing for the urban revitalization area does not constitute the granting of prior approval for any particular project. Also, prior approval for a project can only be

granted by resolution of the city council or county board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project.

80.8(3) *Eligibility for exemption.* Improvements made as a result of a project begun more than one year prior to a city's or county's adoption of an urban revitalization ordinance are not eligible to receive the partial exemption even though some of the improvements are added during the time the area was designated as an urban revitalization area. For a project commenced within one year prior to the adoption of an urban revitalization ordinance, the partial exemption can be allowed only for those improvements constructed on or after the effective date of the ordinance. (1982 O.A.G. 358)

80.8(4) *Minimum value added.* Once the minimum value added required by Iowa Code section 404.3(7) has been assessed, any amount of additional value added to the property in subsequent years is eligible for the partial exemption. The value added subject to partial exemption for the first year for which an exemption is claimed and allowed shall include value added to the property for a previous year even if the value added in the previous year was not by itself sufficient to qualify for the partial exemption.

For example, assume that an urban revitalization project is begun on commercial property having an actual value of \$50,000 as of January 1, 1984. As a result of improvements made during 1984, the actual value of the property as of January 1, 1985, is determined to be \$55,000. Additional improvements made during 1985 increase the actual value of the property to \$70,000 for the 1986 assessment. In this example, no partial exemption can be allowed for 1985 since the value added for that year is less than 15 percent of the actual value of the property prior to construction of the improvements. A partial exemption can be allowed for 1986 and subsequent years for the \$20,000 value added in both 1985 and 1986, providing a valid application for the partial exemption is filed between January 1, 1986, and February 1, 1986, inclusive.

80.8(5) *Application for partial exemption.*

a. Prior approval. If a taxpayer has secured a prior approval resolution from the city council or the county board of supervisors, the partial exemption cannot be obtained until the year in which all value added for the project is first assessed. A partial exemption can be allowed only if an application is filed between January 1 and February 1, inclusive, of the year in which all value added for the project is first assessed. If an application is not filed during that period, no partial exemption can be allowed for that year or any subsequent year. The submission to the city council or the county board of supervisors of a proposal to receive prior approval does not by itself constitute an application for the partial exemption.

For example, assume a city council or county board of supervisors approves a prior approval resolution in April 1984 for a revitalization project to be completed in September 1986. Assuming all construction on the project is completed in 1986, no partial exemption can be allowed until 1987 since that would be the year in which all value added for the project is first assessed. To receive the partial exemption, a valid application would have to be filed between January 1, 1987, and February 1, 1987, inclusive.

b. No prior approval. If a project has not received a prior approval resolution, a taxpayer has the option of receiving the partial exemption beginning with any year in which value is added to the property or waiting until all value added to the property is first assessed in its entirety. To secure a partial exemption prior to the completion of the project, an application must be filed between January 1 and February 1, inclusive, in each year for which the exemption is claimed.

For example, assume a revitalization project is begun in June 1984 and completed in September 1985, that no prior approval resolution for the project has been approved, and that a ten-year exemption period has been selected. Assume further that as a result of construction on the project, value is added for the assessment years 1985 and 1986. If an application is filed between January 1, 1985, and February 1, 1985, inclusive, a partial exemption could be allowed for the value added for 1985 beginning with the 1985 assessment and ending with the 1994 assessment. If an application is filed between January 1, 1986, and February 1, 1986, inclusive, a partial exemption could be allowed for the value added for 1986 beginning with the 1986 assessment and ending with the 1995 assessment. The partial exemption allowable for the years 1986 through 1995 would be against the value added for 1986 as a result of improvements made during calendar year 1985.

In the example above, the taxpayer may elect not to file an application for the partial exemption in 1985. In this situation, if an application is filed between January 1, 1986, and February 1, 1986, inclusive, a partial exemption could be allowed for the total value added for 1985 and 1986 and would apply to assessments for the years 1986 through 1995.

c. Filing deadline. If February 1 falls on a Saturday or Sunday, an application for the partial exemption may be filed the following Monday. Applications submitted by mail must be postmarked on or before February 1, or on or before the following Monday if February 1 falls on a Saturday or Sunday.

d. Extended filing deadline. The exemption is allowable for the total number of years in the exemption schedule if a claim for exemption is filed within two years of the original February 1 filing deadline. The city council or county board of supervisors may by resolution provide that an application for the partial exemption can be filed by February 1 of any assessment year the area is designated as an urban revitalization area. The exemption shall be allowed for the same number of years remaining in the exemption schedule selected as would have been remaining had the claim for exemption been timely filed.

80.8(6) Value exempt. The partial exemption allowed for a year in which an application is filed shall apply to the value added and first assessed for that year and any value added to the project and assessed for a preceding year or years and for which a partial exemption had not been received.

80.8(7) Minimum assessment. The partial exemption shall apply only to the value added in excess of the actual value of the property as of the year immediately preceding the year in which value added was first assessed. If the actual value of the property is reduced for any year during the period in which the partial exemption applies, any reduction in value resulting from the partial exemption shall not reduce the assessment of the property below its actual value as of January 1 of the assessment year immediately preceding the year in which value added was first assessed. This subrule applies regardless of whether the reduction in actual value is made by the assessor, the board of review, a court order, or an equalization order of the director of revenue.

80.8(8) Value added. As used in this rule, the term “value added” means the amount of increase in the actual value of real estate directly attributable to improvements made as part of a revitalization project. The amount of “actual value added” shall be the difference between the assessed value of the property on January 1 of the year value is added to the property and the assessed value of the property the following assessment year. “Value added” does not include any increase in actual (market) value attributable to that portion of the real estate assessed prior to the year in which revitalization improvements are first assessed. The sales price of the property rather than the assessed value of the property may be used in determining the percentage increase required to qualify for exemption if the improvements were begun within one year of the date the property was purchased.

80.8(9) Repeal of ordinance. An urban revitalization project which has received proper prior approval shall be eligible to receive the partial exemption following completion of the project even if the city council or county board of supervisors subsequently repeals the urban revitalization ordinance before improvements in the project are first assessed (1980 O.A.G. 639).

This rule is intended to implement Iowa Code chapter 404 as amended by 2002 Iowa Acts, House File 2622.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.9(427C,441) Forest and fruit-tree reservations.

80.9(1) Determination of eligibility for exemption. Property for which an application for exemption as a forest or fruit-tree reservation has been filed shall be inspected by the assessor or county conservation board. The county board of supervisors designates whether all inspections in the county are to be made by the assessor, including any city assessor, or by the county conservation board. When appropriate, aerial photographs may be used in place of an on-site inspection of the property. The assessment or exemption of the property is to be based upon criteria established by the state conservation commission and findings obtained by the inspection of the property or the examination of aerial photographs of the property.

80.9(2) Application for exemption.

a. An application for exemption must be filed with the appropriate assessor between January 1 and February 1, inclusive, of the assessment year for which the exemption is first claimed. If the inspection of the property is to be made by the county conservation board, the assessor shall forward the application to the board for its recommendation. Once the application has been accepted, the exemption is applicable to the current and subsequent assessment years and no further application shall be required so long as the property remains eligible for the exemption.

b. If February 1 falls on a Saturday or Sunday, an application for exemption may be filed the following Monday.

c. An application shall be considered to be timely filed if postmarked on or before February 1 or the following Monday if February 1 falls on a Saturday or Sunday.

80.9(3) Notification to property owner. If the property is to be inspected by the county conservation board, the board shall make every effort to submit its recommendation to the assessor in sufficient time for the assessor to notify the claimant by April 15. The assessor shall notify the claimant by April 15 of the disposition of the application for exemption. If because of the date on which an application is filed a determination of eligibility for the exemption cannot be made in sufficient time for notification to be made by April 15, the assessor shall assess the property and notify the property owner of the inability to act on the application. The notification shall contain the actual value and classification of the property and a statement of the claimant's right of appeal to the local board of review.

80.9(4) Appeal of eligibility determination. If a property for which a claim for exemption as a forest or fruit-tree reservation is assessed for taxation, the property owner may appeal the assessment to the board of review under Iowa Code section 441.37.

80.9(5) Valuation of property. For each assessment year for which property is exempt as a forest or fruit-tree reservation, the assessor shall determine the actual value and classification that would apply to the property were it assessed for taxation that year. In any year for which the actual value or classification of property so determined is changed, the assessor shall notify the property owner pursuant to Iowa Code sections 441.23, 441.26 and 441.28.

80.9(6) Recapture tax.

a. *Assessment of property.* If the county conservation board or the assessor determines a property has ceased to meet the eligibility criteria established by the state conservation commission, the property shall be assessed for taxation and subject to the recapture tax. The property shall be subject to taxes levied against the assessment made as of January 1 of the calendar year in which the property ceased to qualify for exemption. In addition, the property shall be subject to the tax which would have been levied against the assessment made as of January 1 of each of the five preceding calendar years for which the property received an exemption.

b. *Assessment procedure.* If the determination that a property has ceased to be eligible for exemption is made by the assessor by April 15, the assessor shall notify the property owner of the assessment as of January 1 of the year in which the determination is made in accordance with Iowa Code sections 441.23, 441.26, and 441.28. The assessment of the property for any of the five preceding years and for the current year, if timely notice by April 15 cannot be given, shall be by means of an omitted assessment as provided in Iowa Code section 443.6 (*Talley v. Brown*, 146 Iowa 360, 125 N.W. 243(1910)). Appeal of the omitted assessment may be taken pursuant to Iowa Code sections 443.7 and 443.8.

c. *Computation of tax.* The county auditor shall compute the tax liability for each year for which an assessment has been made pursuant to subrule 80.9(6), paragraph "b." The tax liability shall be the amount of tax that would have been levied against each year's assessment had the property not received the exemption. In computing the tax, the valuations established by the assessor shall be adjusted to reflect any equalization order or assessment limitation percentage applicable to each year's assessment.

d. *Entry on tax list.* The tax liability levied against assessments made as of January 1 of any year preceding the calendar year in which the property ceased to qualify for exemption shall be entered on the tax list for taxes levied against all assessments made as of January 1 of the year immediately preceding the calendar year in which the property ceased to qualify for exemption. However, if those taxes have

already been certified to the county treasurer, the recapture taxes shall be entered on the tax list for taxes levied against assessments made as of January 1 of the year in which the property ceased to qualify for exemption. The tax against the assessment made as of January 1 of the year in which the property ceased to qualify for exemption shall be levied at the time taxes are levied against all assessments made as of that date.

e. Delinquencies. Recapture taxes shall not become delinquent until the time when all other unpaid taxes entered on the same tax list become delinquent.

f. Exceptions to recapture tax.

(1) Fruit-tree or forest reservations. Property which has received an exemption as a fruit-tree or forest reservation is not subject to the recapture tax if the property is maintained as a fruit-tree or forest reservation for at least five full calendar years following the last calendar year for which the property was exempt as a fruit-tree or forest reservation.

(2) Property which has been owned by the same person or the person's direct descendants or antecedents for at least ten years prior to the time the property ceases to qualify for exemption shall not be subject to the recapture tax.

(3) Property described in subparagraphs 80.9(6)"f"(1) and 80.9(6)"f"(2) is subject to assessment as of January 1 of the calendar year in which the property ceases to qualify for exemption.

This rule is intended to implement Iowa Code chapter 427C as amended by 2001 Iowa Acts, House File 736, and Iowa Code section 441.22.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.10(427B) Underground storage tanks.

80.10(1) Authority of city councils and county boards of supervisors. A city council or county board of supervisors may provide by ordinance to grant property tax credits to small business owners for payment of underground storage tank cleanup costs. The ordinance is to designate the period of time over which the credit is to be granted (not to exceed ten years) and the percentage of credit to be granted each year. If the ordinance is repealed, existing credits are to continue through their designated expiration date. A small business means a business with gross receipts of less than \$500,000 per year.

80.10(2) Application for credit. The small business owner is required to file an application for credit with the respective city council or county board of supervisors by September 30 of the year following the calendar year in which cleanup costs were paid and each succeeding year the credit is applicable. The application for credit shall be prescribed by the director of revenue and shall contain, but not be limited to, the small business owner's cleanup costs and gross receipts for the most recent tax year.

80.10(3) Allowance of credit. Credits granted by a county board of supervisors are applicable only to property located outside the corporate limits of a city and credits granted by a city council are only applicable to property located within the corporate limits of the city. The amount of the credit granted cannot exceed the small business owner's cleanup costs nor the amount of city or county taxes paid on the property where the underground storage tank is located for any fiscal year the credit is applicable. Upon approval of the application for credit, the city council or county board of supervisors shall direct its city clerk or county treasurer to reimburse the small business owner in the amount of the designated credit.

This rule is intended to implement Iowa Code sections 427B.20 to 427B.22.

701—80.11(425A) Family farm tax credit.

80.11(1) Eligibility for credit. Generally, the family farm tax credit is only intended to benefit tracts of agricultural land that are owned by certain individuals or enumerated legal entities if the owner or other specified persons are actively engaged in farming.

a. In order for a tract of land to qualify for the family farm tax credit, the following three criteria must be satisfied:

(1) The tract of land must be an "eligible tract of agricultural land" as defined in Iowa Code subsection 425A.2(5). This means the tract must be ten acres or more or contiguous to a tract of more than ten acres and used in good faith for agricultural or horticultural purposes. More than half of

the acres in the tract must be devoted to the production of crops or livestock by a designated person. Contiguous tracts under the same legal ownership and located within the same county are considered one tract. Only tracts of land that are classified as agricultural real estate qualify for the credit.

(2) The tract of land must be owned by:

1. An individual or persons related or formerly related to each other, or
2. A partnership where all the partners are related or formerly related to each other, or
3. A family farm corporation as defined in Iowa Code subsection 9H.1(8), or
4. An authorized farm corporation as defined in Iowa Code subsection 9H.1(3).

The ownership criteria must be met on June 30 of the fiscal year prior to the fiscal year in which the application for credit is filed. For example, the ownership criteria must be met on June 30, 1990, for applications for credit filed in 1990.

(3) A designated person must be “actively engaged in farming” the tract during the fiscal year prior to the fiscal year in which the application for credit is filed. If the tract is owned by an individual or related persons, the designated person who is actively engaged in farming must be an owner of the tract, the owner’s spouse, or the owner’s relative within the third degree of consanguinity or their spouses. This includes the owner’s child, stepchild, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, niece, or nephew or their spouses. The only step relative that may qualify as a designated person is a stepchild. If the owner of the tract is a partnership, the designated person who is actively engaged in farming must be a partner or a partner’s spouse. If the owner of the tract of land is a family farm corporation, the designated person who is actively engaged in farming must be a family member who is a shareholder of the family farm corporation or the shareholder’s spouse. If the owner of the tract of land is an authorized farm corporation, the designated person who is actively engaged in farming must be the shareholder who owns at least 51 percent of the stock of the authorized farm corporation or that shareholder’s spouse.

If the owner is an individual who leases the land to a family farm corporation or partnership, a shareholder of the corporation or a partner of the partnership shall be considered a designated person if the combined stock of the family farm corporation or the combined partnership interest owned by the owner, the owner’s spouse and persons related to the owner within the third degree of consanguinity and their spouses is equal to at least 51 percent of the stock of the family farm corporation or the ownership interest in the partnership.

b. In order to be “actively engaged in farming” the designated person must be personally involved in the production of crops or livestock on the “eligible tract” on a regular, continuous and substantial basis. Personal involvement in the production of crops or livestock includes not only field activities such as soil preparation and testing, planting, fertilizing, spraying, inspecting, cultivating and harvesting but also managerial decision-making activities relating to hybrid selection, crop rotation planning, crop selection, equipment purchases and marketing strategies. Personal involvement in the production of crops or livestock also includes activities pertaining to crop insurance selection, loan selection, and financial record maintenance and preparation. A person performing activities in the capacity of a lessor, whether under a cash or crop-share lease and whether under a written or oral lease, is not actively engaged in farming on the area of the tract covered by the lease.

c. Tracts subject to a federal program pertaining to agricultural land. In lieu of satisfying the “actively engaged in farming” test, a designated person may demonstrate that the person was in general control of the tract which was subject to a federal program pertaining to agricultural land during the prior fiscal year. This alternative test is intended to apply in circumstances where the active farming criteria cannot be met because the land is in the Conservation Reserve Program (commonly referred to as the CRP) or a program substantially similar to the 0/92 option where the tract has been taken out of production.

d. The following examples illustrate family farm tax credit eligibility under various circumstances:

EXAMPLE 1. A and B jointly own land and were both personally involved in the farming operation. They are not related. No credit is allowable because it is a requirement that individual owners be related. If A and B were brothers, the land would qualify for the credit.

EXAMPLE 2. A owns the land and is retired. A leased the land to B, his son. B was personally involved in the farming operation. The land is eligible for the credit even though a lease arrangement existed because the actively engaged in farming requirement can be satisfied through the activities of the owner's spouse, or the owner's relative within the third degree of consanguinity or the relative's spouse. See paragraph "a," subparagraph (3), of this subrule. No credit would be allowable if A and B were not related.

EXAMPLE 3. A owns two contiguous 40-acre tracts. A farmed all of one tract but only 15 acres of the other tract. The other 25 acres of the second tract were leased to a nondesignated person. Both tracts qualify for the credit because contiguous tracts under the same legal ownership are considered one tract and more than half of the total of 80 acres ($40 + 15 = 55$) were farmed by A.

EXAMPLE 4. The land is owned by a partnership in which the partners A, B, C and D are brothers. A and B farm the land but C and D have no involvement in the farming operation. The land is eligible for the credit because it makes no difference what level of involvement each partner had nor does it matter that one or more of the partners were not personally involved in the farming operation. The only requirement for qualifying for the credit is that at least one of the partners or one of the partners' spouses was personally involved in the farming operation. No credit would be allowable if all the partners were not related to each other.

EXAMPLE 5. The land is owned by a family farm corporation in which the stock is owned equally by A, B and C. A and B are brothers but not related to C. All three partners were personally involved in the farming operation. The land qualifies for the credit because it is only a requirement that a family member who is a shareholder in the family farm corporation be involved in the farming operation. The land would qualify for the credit even if B was not involved in the farming operation. However, no credit would be allowable if only C was involved in the farming operation.

EXAMPLE 6. The land is owned by an authorized farm corporation in which 60 percent of the stock is owned by A and 40 percent of the stock is owned by B. Both A and B were personally involved in the farming operation. The credit is allowable as long as the stockholder who owns at least 51 percent of the stock was personally involved in the farming operation. No credit would be allowable if A was not personally involved in the farming operation.

80.11(2) *Application for credit.* To obtain the credit, the owner must file an application for credit with the assessor by November 1. If the claim for credit is approved, no further filing shall be required provided the ownership and the designated person actively engaged in farming the property remain the same during successive years. A new application for credit shall be required only if the property is sold or the designated person changes. The county board of supervisors shall review all claims and make a determination as to eligibility. The claimant may appeal a decision of the board to district court by giving written notice to the board within 20 days of the board's notice.

80.11(3) *Application of credit.* The county auditor shall certify to the department of revenue by April 1 the total amount of family farm tax credits due the county. The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of \$5.40 multiplied by the taxable value of the eligible tract.

80.11(4) *Penalty.* The owner shall provide written notice to the assessor if the designated person changes. Failure to do so shall result in the owner's being liable for the amount of the credit plus a penalty equal to 5 percent of the amount of the credit granted.

This rule is intended to implement Iowa Code chapter 425A as amended by 2001 Iowa Acts, House Files 712 and 713.

701—80.12(427) Methane gas conversion property.

80.12(1) *Application for exemption.* An application for exemption is required to be filed with the appropriate assessing authority by February 1 of each year. The assessed value of the property is to be prorated to reflect the appropriate amount of exemption if the property used to convert the methane gas to energy also uses another fuel. The first year exemption shall be equal to the estimated ratio that the methane gas consumed bears to the total fuel consumed times the assessed value of the property. The exemption for subsequent years shall be based on the actual ratio for the previous year.

80.12(2) *Eligibility for exemption.* To qualify for exemption, the property must be used either in an operation that decomposes waste and converts it to methane gas or other gases produced as a byproduct of waste decomposition, then collects the gases and converts them to energy; or in an operation that collects waste in order to decompose it to produce methane gas or other gases for conversion into energy. The exemption applies to both property used in connection with, or in conjunction with, a publicly owned sanitary landfill and to property not used in connection with, or in conjunction with, a publicly owned sanitary landfill.

The exemption for property not used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill is limited to property originally placed in operation on or after January 1, 2008, and on or before December 31, 2012, and will be available for the ten-year period following the date the property was originally placed in operation.

This rule is intended to implement Iowa Code section 427.1(29) as amended by 2009 Iowa Acts, Senate File 478, section 224.

[ARC 7726B, IAB 4/22/09, effective 5/27/09; ARC 8358B, IAB 12/2/09, effective 1/6/10]

701—80.13(427B,476B) Wind energy conversion property.

80.13(1) *Special valuation allowed by ordinance.* A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property. If the ordinance is repealed, the special valuation applies through the nineteenth assessment year following the first year the property was assessed. Once the ordinance has been repealed and the special valuation is no longer applicable, the property must be valued at market value rather than at 30 percent of net acquisition cost. The special valuation applies to property first assessed on or after the effective date of the ordinance. The local assessor must value the property in accordance with the schedule provided in Iowa Code section 427B.26(2). The property qualifies for special valuation provided the taxpayer files a declaration of intent with the local assessor by February 1 of the assessment year in which the property is first assessed for tax to have the property locally assessed. The property must not be assessed until the assessment year following the year the entire wind plant is completed. A wind plant is completed when it is placed in service.

80.13(2) *Special valuation not allowed by ordinance.* If a city council or county board of supervisors has not passed an ordinance providing for the special valuation of wind energy conversion property, the property is to be assessed by the department of revenue for a period of 12 years, and the taxes payable on the facilities are to be paid to the department at the same time as regular property taxes. The owner of the facility must file an annual report with the department by May 1 of each year during the 12-year assessment period, and the department must certify the assessed value of the facility by November 1 of each year to the county auditor. The board of supervisors must notify the county treasurer to state on the tax statement that the property taxes are to be paid to the department. The board must also notify the department of those facilities that are required to pay the property taxes to the department. The department must notify the county treasurer of the date the taxes were paid within five business days of receipt, and the notification is authorization for the county treasurer to mark the record as paid in the county system.

This rule is intended to implement Iowa Code section 427B.26 and chapter 476B as amended by 2009 Iowa Acts, Senate File 456, sections 2 and 4.

[ARC 7726B, IAB 4/22/09, effective 5/27/09; ARC 8358B, IAB 12/2/09, effective 1/6/10]

701—80.14(427) Mobile home park storm shelter.

80.14(1) *Application for exemption.* An application for exemption must be filed with the assessing authority by February 1 of the first year the exemption is requested. Applications for exemption are not required in subsequent years if the property remains eligible for exemption.

80.14(2) *Eligibility for exemption.* The structure must be located in a mobile home park as defined in Iowa Code section 435.1.

80.14(3) *Valuation exempted.* If the structure is used exclusively as a storm shelter, it shall be fully exempt from taxation. If the structure is not used exclusively as a storm shelter, the exemption shall be limited to 50 percent of the structure's commercial valuation.

This rule is intended to implement Iowa Code Supplement section 427.1(30).

701—80.15(427) Barn and one-room schoolhouse preservation. The increase in value added to a farm structure constructed prior to 1937 or one-room schoolhouse as a result of improvements made is exempt from tax. An application must be filed with the assessor by February 1 of the first assessment year only and the exemption is to continue as long as the structure continues to be used as a barn or in the case of a one-room schoolhouse is not used for dwelling purposes. A "barn" is an agricultural structure that is used for the storage of farm products or feed or the housing of farm animals, poultry, or farm equipment.

This rule is intended to implement Iowa Code sections 427.1(31) and 427.1(32) as amended by 2000 Iowa Acts, House File 2560.

701—80.16(426) Agricultural land tax credit.

80.16(1) *Eligibility for credit.* The credit shall be allowed on land in tracts of ten acres or more, or land of less than ten acres if part of other land of more than ten acres, and used for agricultural or horticultural purposes.

80.16(2) *Application for credit.* No application for credit is required.

80.16(3) *Application of credit.* The county auditor shall certify to the department of revenue by April 1 the total amount of agricultural land tax credits due the county. The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of \$5.40 multiplied by the taxable value of the eligible tract.

This rule is intended to implement Iowa Code chapter 426 as amended by 2001 Iowa Acts, House File 713.

701—80.17(427) Indian housing property. Property owned and operated by an Indian housing authority, as defined in 24 CFR 950.102, is exempt from taxation provided the exemption has been approved by the city council or county board of supervisors, whichever is applicable, and a valid claim for exemption has been filed pursuant to Iowa Code section 427.1(14) by February 1.

This rule is intended to implement Iowa Code section 427.1 as amended by 2001 Iowa Acts, Senate File 449.

701—80.18(427) Property used in value-added agricultural product operations. Fixtures used for cooking, refrigeration, or freezing of value-added agricultural products used in value-added agricultural processing or used in direct support of value-added agricultural processing are exempt from tax. Direct support includes storage by public refrigerated warehouses for processors of value-added agricultural products prior to the start of the value-added agricultural processing operation. The exemption does not apply to fixtures used primarily for retail sale or display. If the taxpayer is a retailer, there is a presumption that the fixtures are being used primarily for retail sale or display. The exemption applies only to fixtures that are attached in a manner set forth in Iowa Code section 427A.1(2).

The following definitions apply to this rule:

"Fixture" means property which was originally personal property but which by being physically attached to the realty becomes part of the realty and upon removal does not destroy the property to which it is attached.

"Value-added agricultural processing" means an operation whereby an agricultural product is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in a marketable agricultural product to be sold at retail. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing.

“Value-added agricultural product” means an agricultural product which, through a series of activities or processes, may be sold at a higher price than its original purchase price.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2001 Iowa Acts, House File 715.

701—80.19(427) Dwelling unit property within certain cities. Dwelling unit property owned and managed by a nonprofit community housing development organization that owns and manages more than 150 dwelling units in a city with a population of more than 110,000 is exempt from tax. The organization must be recognized by the state and the federal government pursuant to criteria contained in the HOME program of the federal National Affordable Housing Act of 1990 and must be exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The exemption does not extend to dwelling units located outside the city. The organization must file an application for exemption with the assessing authority not later than February 1 of the assessment year. Applications for exemption are not required in successive years if the property continues to qualify for the exemption.

This rule is intended to implement Iowa Code Supplement section 427.1(21A) as amended by 2006 Iowa Acts, House File 2792.

701—80.20(427) Nursing facilities. If the assessor determines that property is being used for a charitable purpose pursuant to Iowa Code section 427.1(8), it shall be fully exempt from tax if it is licensed under Iowa Code section 135C.1(13) by the department of inspections and appeals, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and a valid application for exemption has been filed with the assessor by February 1 of the assessment year.

This rule is intended to implement Iowa Code Supplement section 427.1(14).

701—80.21(368) Annexation of property by a city. A city council may provide a partial tax exemption from city taxes against annexed property for a period of ten years. The exemption schedule is contained in Iowa Code Supplement section 368.11(3) “m.” All property owners included in the annexed area must receive the exemption if the city elects to allow the exemption.

This rule is intended to implement Iowa Code Supplement section 368.11(3) “m” as amended by 2006 Iowa Acts, House File 2794.

701—80.22(427) Port authority. The property of a port authority created pursuant to Iowa Code Supplement section 28J.2 when devoted to public use and not held for pecuniary profit is exempt from taxation.

This rule is intended to implement Iowa Code Supplement section 427.1(34).

701—80.23(427A) Concrete batch plants and hot mix asphalt facilities. A concrete batch plant includes the machinery, equipment, and fixtures used at a concrete mixing facility to process cement dry additive and other raw materials into concrete. A hot mix asphalt facility is any facility used to manufacture hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements. These facilities shall not be assessed and taxed as real property regardless of the property’s attachment to real estate. The land on which the facilities are located is taxable.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2006 Iowa Acts, Senate File 2391.

701—80.24(427) Airport property. Property owned by a city or county at an airport and leased to a fixed base operator providing aeronautical services to the public is exempt from taxation.

This rule is intended to implement Iowa Code section 427.1(2) as amended by 2006 Iowa Acts, House File 2794.

701—80.25(427A) Car wash equipment. Property that is equipment used for the washing, waxing, drying, or vacuuming of motor vehicles and point-of-sale equipment necessary for the purchase of car wash services shall not be assessed and taxed as real property.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2006 Iowa Acts, House File 2794.

701—80.26(427) Web search portal and data center business property. This exemption includes computers and equipment necessary for the maintenance and operation of a web search portal or data center business, including cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under Iowa Code chapter 437A; back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays. The exemption does not apply to land, buildings, and improvements. The web search portal or data center business must meet the requirements contained in Iowa Code section 423.3, subsection 92, subsection 93, or subsection 95, for the exemption to be allowable. The owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed. Claims for exemption in successive years will be required only for property additions.

This rule is intended to implement Iowa Code sections 427.1(35) and 427.1(36) and section 427.1 as amended by 2009 Iowa Acts, Senate File 478, section 200.

[ARC 8358B, IAB 12/2/09, effective 1/6/10]

701—80.27(427) Privately owned libraries and art galleries. Claims for exemption for libraries and art galleries owned and kept by private individuals, associations, or corporations for public use and not for private profit must be filed with the local assessor by February 1 of the first year the exemption is requested. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of claims as long as the property continues to be used as a library or art gallery for public use and not for private profit.

This rule is intended to implement Iowa Code Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400.

701—80.28(404B) Disaster revitalization area. The governing body of a city or county may, by ordinance, designate an area of the city or county a disaster revitalization area if that area is within a county or portion of a county in which the governor has proclaimed a disaster emergency or the United States president has declared a major disaster. All real property within a disaster revitalization area is eligible to receive a 100 percent exemption from taxation on the increase in assessed value of the property if the increase in assessed value is attributable to revitalization of the property occurring between May 25, 2008, and December 31, 2013. The amount of increase in value shall be the difference between the assessed value of the property on January 1, 2007, and the assessed value of the property on January 1, 2010, and subsequent assessment years. The exemption is for a period not to exceed five years, starting with an assessment year beginning on or after January 1, 2010. A city or county may adopt a tax exemption percentage different from the 100 percent exemption. The different percentage adopted must not allow a greater exemption, but may allow a smaller exemption. If the homeowner elects to take the exemption provided in this rule, the homeowner may not claim any other value-added exemption. An application must be filed for each revitalization project resulting in increased assessed value for which an exemption is claimed. The application for exemption must be filed by the owner of the property with the local assessor by February 1 of the first assessment year for which the exemption is requested. After the tax exemption is granted, the exemption will continue for succeeding years without the taxpayer's having to file an application for exemption unless additional revitalization projects occur on the property. The ordinance must expire or be repealed no later than December 31, 2016.

This rule is intended to implement 2009 Iowa Acts, Senate File 457, sections 23 to 30.

[ARC 8358B, IAB 12/2/09, effective 1/6/10]

701—80.29(427) Geothermal heating and cooling systems installed on property classified as residential.

80.29(1) *In general.* An exemption from property tax shall be allowed for any value added to property by any new construction or refitted installation of a geothermal heating or cooling system if the geothermal heating or cooling system is constructed or installed on or after July 1, 2012, on property classified as residential. The exemption shall also be allowed for a residential dwelling on agricultural land. The exemption does not have to be claimed the year subsequent to the year the geothermal system is constructed or installed. However, every individual claiming the exemption under this rule shall file with the appropriate assessor, not later than February 1 of the year for which the exemption is requested, an application for exemption. The assessor shall then allow or disallow the exemption.

Upon the filing and allowance of the claim, the claim shall be allowed on the property for ten consecutive years without further filing as long as the property continues to be classified as residential. However, if the property ceases to be classified as residential or if the geothermal heating and cooling system ceases to exist before the ten years have expired, no exemption is allowed for the year in which the change in classification took place or for any subsequent years. The exemption amount shall remain fixed at the same amount that was allowed in the first year the exemption was allowed.

The property tax exemption applies to any value added by the addition of mechanical, electrical, plumbing, ductwork, or other equipment, labor, and expenses included in or required for the construction or installation of the geothermal system that would not have been included in the home if not for the installation of the geothermal heating and cooling system. Additionally, the proportionate value of any well field associated with the system and attributable to the owner is exempt.

80.29(2) *Calculation of value added.* As used in this rule, the terms “any value added” and “value added” mean the amount of increase in the actual assessed value of the property that is directly attributable to the new construction or refit installation of a geothermal heating or cooling system as of the first year for which the geothermal heating and cooling system is actually assessed. “Any value added” does not include speculative or indirect increases in value which, for example, may be attributable to reductions in energy consumption or reductions in the negative impact to the environment. “Any value added” does not include changes in value which are attributable to general housing market fluctuations. Cost of the new construction or refit installation of the geothermal heating or cooling system is not determinative of the value added to a property. In the event the exemption is not filed in the same year the geothermal heating and cooling system is first assessed, the amount of the exemption, upon filing, shall be the same amount as it would have been had the exemption been filed in the year the geothermal heating and cooling system was first assessed.

In the case of new construction and refit installation of a geothermal heating or cooling system, the value added is the value that would not have been included in the home if not for the construction or refit installation of the geothermal heating and cooling system. That is, the value of mechanical, electrical, plumbing, ductwork, or other equipment, labor, and expenses that would have been included with a standard heating and cooling system shall not be considered in calculating the value added. To measure the value added by a geothermal heating and cooling system, the assessor shall compute the difference between the assessed value of the residential property if the property were outfitted with a non-geothermal (standard) heating and cooling system and the assessed value of the property outfitted with the geothermal system. In the case that the new construction or refit installation takes more than one year, the assessor shall make the comparison in the year the new construction or refit installation is completed.

EXAMPLE A: Mrs. Smith wants to upgrade her current standard heating and cooling system in her home with a geothermal system. The geothermal system installation is completed on August 1, 2012. On January 22, 2013, Mrs. Smith files a claim for exemption for the value added to her property that is directly attributable to the refit installation of the geothermal system. To determine the value added that is directly attributable to the geothermal system, the assessor shall compare the value of the home as though it was outfitted with the standard heating and cooling system which was upgraded with the value of the home outfitted with the geothermal heating and cooling system; the difference between the two values is the exemption amount. That exemption amount will remain fixed for the next ten years,

until Mrs. Smith's home ceases to be classified as residential, or until the geothermal system ceases to exist, whichever occurs first. For years subsequent to 2013, any increase in the value of Mrs. Smith's home beyond the assessed value of the home outfitted with the geothermal heating and cooling system is not attributable to the geothermal system and is subject to property tax. The property tax exemption amount for the geothermal heating and cooling system will remain the same as the first year for which the exemption was received even if the assessed value of Mrs. Smith's home drops.

EXAMPLE B: Same facts as Example A, except that on January 1 of year seven, Mrs. Smith's home is reclassified as commercial property. No property tax exemption is allowed for the value added by the geothermal system for year seven or any subsequent years.

EXAMPLE C: Mr. Larson is building a new home and plans to construct a new geothermal system in lieu of a standard heating and cooling system. The home and geothermal system are completed on October 24, 2012. To determine the value added that is directly attributable to the installation of the geothermal system, the assessor shall assess the home as though it had been outfitted with a standard heating and cooling system and compare that value with the assessed value of the home outfitted with the geothermal heating and cooling system. The difference between the two amounts is the value added that is directly attributable to the geothermal system and is the exemption amount. In 2013, the assessed value of Mr. Larson's home with a standard heating and cooling system is \$200,000. The assessed value of Mr. Larson's home with the geothermal system is \$210,000. Therefore, the value added to the property that is directly attributable to the geothermal system is \$10,000. Mr. Larson may claim an exemption amount of \$10,000 starting in assessment year 2013. Mr. Larson does not lose the exemption if he fails to claim the exemption by February 1, 2013; he may claim the exemption in any year subsequent to the completion of the construction of the home. An exemption amount of \$10,000 will continue for ten consecutive years after the exemption is claimed, until the property ceases to be classified as residential, or until the geothermal system ceases to exist, whichever occurs first.

EXAMPLE D: Same facts as Example C, except that Mr. Larson claims the exemption in 2019. The exemption amount in 2019, and the nine subsequent years, is the value added in the year the geothermal heating and cooling system was first assessed; here, \$10,000 in 2013. The value added and exemption amount is not calculated in the year Mr. Larson claims the exemption. The \$10,000 exemption will then continue until 2028, until the property ceases to be classified as residential or until the geothermal system ceases to exist, whichever occurs first.

This rule is intended to implement Iowa Code section 427.1.
[ARC 0467C, IAB 11/28/12, effective 1/2/13]

701—80.30(426C) Business property tax credit.

80.30(1) Definitions. For purposes of this rule, the following definitions shall govern.

"Contiguous parcels" means any of the following:

1. Parcels that share a common boundary. There is a rebuttable presumption that parcels separated by a roadway, alley, or waterway do not share a common boundary. The burden of proof shall be upon the property owners to provide evidence or verification that parcels separated by a roadway, alley, or waterway share a common boundary. Parcels owned to the middle of a road, waterway, alley, or railway in fee simple title are considered to share a common boundary.

2. Parcels within the same building or structure regardless of whether the parcels share a common boundary.

3. Permanent improvements to the land that are situated on one or more parcels of land that are assessed and taxed separately from the permanent improvements if the parcels of land upon which the permanent improvements are situated share a common boundary. This arrangement is more commonly referred to as buildings or permanent improvements that are taxed as buildings upon leased land.

"Dwelling unit" means an apartment, group of rooms, or single room that is occupied as separate living quarters, or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building. A vacant dwelling unit that does not have active utility services is not considered to be intended for occupancy. Dwelling units do not include hotels, motels, inns, or other buildings where rooms are rented for less than one month.

“*Parcel*” means each separate item shown on the tax list, manufactured or mobile home tax list, schedule of assessment, or schedule of rate change or charge. For fiscal years beginning on or after January 1, 2016, “parcel” also means each portion of a parcel assigned a distinct classification as set forth in rule 701—71.1(405,427A,428,441,499B).

“*Person*” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“*Property unit*” means contiguous parcels all of which are located within the same county, with the same property tax classification, are owned by the same person, and are operated by that person for a common use and purpose.

80.30(2) *In general.* Except as provided in subrule 80.30(8), for property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each parcel classified and taxed as commercial property, industrial property, or railway property unless the parcel is part of a property unit for which a business property tax credit is claimed. For property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each property unit made up of property assessed as commercial property, industrial property, or railway property.

80.30(3) *Application for credit.*

a. Notwithstanding paragraph 80.30(3) “b,” for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2014, the claim for credit shall be received in the office of the applicable city or county assessor not later than January 15, 2014.

b. For a business property tax credit against property taxes due and payable during fiscal years beginning on and after July 1, 2015, and before July 1, 2017, no business property tax credit shall be allowed unless the first application for business property tax credit is received in the office of the applicable city or county assessor on or before March 15 preceding the fiscal year during which the credit first is claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2016, must be received in the office of the applicable city or county assessor on or before March 15, 2016.

c. For a business property tax credit against property taxes due and payable during fiscal years beginning on or after July 1, 2017, no business property tax credit shall be allowed unless the first application for the business property tax credit is received in the office of the applicable city or county assessor on or before July 1 preceding the fiscal year during which the credit is first claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2017, must be received in the office of the applicable city or county assessor on or before July 1, 2016.

d. A claim filed after the filing deadlines set forth in paragraphs 80.30(3) “a,” 80.30(3) “b,” and 80.30(3) “c” will be applied against property taxes due and payable for the following year.

e. Once filed, the claim for credit is applicable to subsequent years, and no further filing shall be required as long as the parcel or property unit satisfies the requirements of the credit. If the parcel or property unit ceases to qualify for the credit, the owner shall provide written notice to the assessor by the date for filing claims in paragraphs 80.30(3) “b” and 80.30(3) “c,” as applicable, following the date on which the parcel or property unit ceases to qualify for the credit. When all or a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the buyer, transferee, or new owner who wishes to receive the credit shall refile the claim for credit. When a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the owner of the portion of the parcel or property unit for which ownership did not change shall refile the claim for credit. A transfer entered in the auditor’s transfer books under 2015 Iowa Code section 558.57 shall be prima facie evidence of a change in ownership of the parcel or property unit. The burden shall be on the claimant to prove that a transfer entered in the auditor’s transfer books did not result in a change in ownership. The deadline for refiling the claim shall be the same as the deadline for filing the claim.

f. In the event the application deadline falls on either a Saturday or Sunday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following Monday.

g. In the event the application deadline falls on a state holiday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following business day.

h. Table 1 shows the applicable claim receipt deadlines and the taxes toward which the claim applies.

Table 1

	Assessment Year 2013	Assessment Year 2014	Assessment Year 2015	Assessment Year 2016	Assessment Year 2017
Claim Receipt Deadline	January 15, 2014	March 16, 2015 ¹	March 15, 2016	July 1, 2016	July 3, 2017 ²
For Taxes Payable	September 2014 & March 2015	September 2015 & March 2016	September 2016 & March 2017	September 2017 & March 2018	September 2018 & March 2019

¹ March 15, 2015, falls on a Sunday.

² July 1, 2017, falls on a Saturday.

i. An assessor may not refuse to accept an application for business property tax credit. Assessors shall remit claims for credit to the county auditor with a recommendation to allow or disallow the claim. If it is the opinion of the assessor that a business property tax credit should not be allowed, the assessor's recommendation to the county auditor shall include in writing the reasons for recommending disallowance.

j. Upon receipt from the assessor of the claims and recommendations, the county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim for credit, the board shall send written notice by mail to the claimant at the claimant's last-known address. The written notice shall state the reasons for disallowing the claim for the credit. Notwithstanding the foregoing, the board is not required to send notice that a claim for credit is disallowed if the claimant voluntarily withdraws the claim.

80.30(4) Appeals.

a. *Initial appeal.* Any person whose claim is disallowed by the board of supervisors may appeal that action to the district court of the county in which the parcel or property unit is located. Notice of appeal must be given to the county auditor within 20 days from the date on which the notification of disallowance was mailed by the board of supervisors.

b. *Reversal.* If the board of supervisors' disallowance of the claim for credit is reversed upon appeal, the credit shall be allowed on the applicable parcel or property unit. The department of revenue, the county auditor, and the county treasurer shall provide the credit and change their books and records accordingly. If the claimant has paid one or both of the installments of the tax payable in the year or years in question, the county treasurer shall remit the amount of the credit to the claimant and submit a request to the department for reimbursement from the business property tax credit fund. The amounts payable as credits awarded on appeal shall be allocated and paid from the balance remaining in the business property tax credit fund established in Iowa Code section 426C.2.

80.30(5) Audit.

a. *Authority and period.* The department of revenue may audit any credit provided under Iowa Code section 426C.4. However, the department shall not adjust a credit allowed more than three years from October 31 of the year in which the claim for credit was filed.

b. *Recalculation or denial.* If an audit reveals that the amount of the credit was incorrectly calculated or that the credit should not have been allowed, the department shall recalculate the credit, if applicable, and notify both the claimant and the county auditor of the recalculation and the reasons it is being made.

c. *Recapture.* If the credit has already been paid, the department shall notify the claimant, the county treasurer, and the applicable assessor of the recalculation or denial of the credit. If the claimant still owns the parcel or property unit for which the credit was claimed, the county treasurer shall collect

the tax owed in the same manner as other due and payable property taxes are collected. If the claimant no longer owns the parcel or property unit for which the credit was claimed, the department may recover the amount of tax owed by filing a lien under Iowa Code section 422.26 or by issuing a jeopardy assessment under Iowa Code section 422.30. Upon collection, the amount of the erroneously allowed credit shall be deposited in the business property tax credit fund.

d. Appeal of recalculation or denial. The claimant or the board of supervisors may appeal any decision of the department to the director of revenue. The director shall review the department's decision within 30 days from the date of the notice of recalculation or denial provided to the claimant and county auditor. The director shall grant a hearing, at which the director shall determine the correct credit, if any. The director shall notify the claimant, board of supervisors, county auditor, and county treasurer of the decision by mail. The claimant or the board of supervisors may seek judicial review of the director's decision pursuant to the provisions of Iowa Code chapter 17A.

e. False claim and penalty. Any person who makes a false claim for the purpose of obtaining a credit or who knowingly receives the credit without being legally entitled to it is guilty of a fraudulent practice. The claim for a credit for such a person shall be disallowed, and the director shall send a notice of disallowance. If the credit has been paid, the amount shall be recovered in the manner described in paragraph 80.30(5) "c."

80.30(6) Property eligible for credit.

a. Eligible parcels and property units.

Parcels and property units classified and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit for the unit. The assessor shall keep a permanent file of all eligible property units in the assessor's jurisdiction. Each assessment year, the assessor shall update the file based on transfers of property from the auditor's transfer book.

b. Taxable status of parcels and property units.

(1) Property that is fully exempt from property tax is not eligible to receive the business property tax credit.

(2) An application for the business property tax credit shall be denied if a parcel or parcels are fully exempt from property tax at the time the application for credit is filed with the city or county assessor.

(3) Determination of eligibility of parcel or property unit based on taxable status.

1. The taxable status of the property on July 1 of the assessment year shall determine the eligibility of the parcel or property unit to receive the credit. If the parcel or property unit becomes exempt from property tax prior to July 1 of the assessment year, the credit shall be disallowed. If the parcel or property unit was taxable on July 1 of the assessment year, but becomes exempt after July 1, the parcel or property unit may receive the credit only in the prorated amount that corresponds to the amount of tax paid in that fiscal year, if any.

2. The assessor shall give notice to the auditor of partial credits allowed due to a change in taxable status of a parcel or property unit. The auditor shall update the auditor's file and give notice on forms prescribed by the department to the department of revenue of partial credits allowed due to a change in taxable status of a parcel or property unit.

(4) The owner of any parcel or property unit that has been granted the credit but becomes exempt from property tax prior to July 1 of the assessment year shall provide written notice to the city or county assessor by the date for filing claims.

(5) The taxable portion of any partially exempted property shall receive the credit only in an amount applicable to the taxable portion.

80.30(7) Common use and purpose. Whether parcels are operated for a common use and purpose depends on all the facts and circumstances of each set of parcels. The following nonexclusive examples illustrate common use and purpose.

EXAMPLE 1. ABC Properties is in the business of building, owning, leasing, and managing large retail spaces. ABC builds and owns a large shopping mall that covers contiguous parcels, all of which are located within the same county. Although the retail establishments that lease retail space in the shopping mall offer different products and services, the shopping mall is owned and operated by ABC

for the common use and purpose of being a lessor. Thus, the parcels that make up the mall are eligible as a single property unit.

EXAMPLE 2. John's LLC owns four commercial parcels located within the same building, and they are, therefore, contiguous as defined in subrule 80.30(1). John's owns and operates two parcels as a beauty parlor. John's rents the other two parcels to a bicycle shop. The four parcels, together, do not have a common use and purpose. However, the two parcels used by John's as an owner-operator of the beauty parlor business are operated with the common use and purpose of providing beauty services and are eligible as one property unit. The two parcels that John's rents to the bicycle shop are operated with the common use and purpose of being rented out for profit as a landlord and are eligible as a second property unit.

80.30(8) *Property ineligible for credit.* The following are not eligible to receive a business property tax credit or to be part of a property unit that receives the business property tax credit:

a. Property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code, as amended, and that is subject to assessment procedures relating to Section 42 property under Iowa Code section 441.21, subsection 2, for the applicable assessment year.

b. Property classified as multiresidential under 701—subrule 71.1(5).

80.30(9) *Application of credit.*

a. A person may claim and receive one business property tax credit for each eligible parcel unless the parcel is part of a property unit for which a credit is claimed.

b. A person may claim and receive one business property tax credit for each property unit. A claim for credit on a parcel that is part of a property unit constitutes a claim for credit on the entire unit.

c. A credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

d. The classification of property used to determine eligibility for the business property tax credit shall be the classification of the property for the assessment year used to calculate the taxes due and payable in the fiscal year for which the credit is claimed.

e. Once filed and allowed, the credit shall continue to be allowed on the parcel or property unit for successive years without further filing of an application unless the parcel or property unit ceases to qualify for the credit under Iowa Code chapter 426C.

f. When all or a portion of a parcel or property unit is sold or transferred or ownership otherwise changes, the new owner must reapply for the credit. The owner of the portion of a parcel or property unit that did not change shall also reapply for the credit. When the composition of a property unit changes as the result of a sale, transfer, or change in ownership, the owner of the property unit must reapply for the credit on the entire unit.

g. The following noninclusive examples illustrate the application of the business property tax credit under various circumstances.

EXAMPLE 1. On February 13, 2015, Mr. Jones files with his county assessor an application for the business property tax credit for taxes due and payable in the fiscal year beginning July 1, 2015. The property that Mr. Jones claims is eligible for the credit is a single parcel that is classified as commercial property. The property is not rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code. The property is not a mobile home park, manufactured home community, land-leased community, or assisted living facility nor is it primarily used or intended for human habitation with three or more separate dwelling units. Therefore, Mr. Jones' application should be approved as a credit against the taxes due and payable in the fiscal year beginning July 1, 2015.

EXAMPLE 2. Same facts as in EXAMPLE 1, but Mr. Jones files his application on July 3, 2016. Mr. Jones' application should be approved, but the credit will be against taxes due and payable in the fiscal year beginning July 1, 2018.

EXAMPLE 3. Davidoff LLC owns two parcels of land, both of which are classified as industrial property. Each parcel is being operated for a common use and purpose. The parcels are separated by a road. If Davidoff owns the property parcels to the middle of the road in fee simple title, the parcels are considered contiguous and would qualify as a unit, and Davidoff would be eligible for a single business

property tax credit. If a third party, including the state, a municipality, or other government entity, owned the road in fee simple title, the parcels would not be considered contiguous, and Davidoff would be eligible for two separate business property tax credits.

EXAMPLE 4. In Madison County, Iowa, there is a wind farm that consists of four wind turbines that are taxed separately as permanent improvements to the land. All the wind turbines are owned by Windy LLC. The turbines sit upon four parcels of land that share a common boundary. Each parcel of land is owned by a different owner. The four wind turbines are contiguous because the wind turbines are taxed as permanent improvements to the land, they are situated upon four parcels of land that share a common boundary, and the land is assessed and taxed separately from the wind turbines. The four wind turbines qualify as a property unit and would be eligible for one business property tax credit.

80.30(10) Calculation of credit.

a. Auditor certification. On or before June 30 of each year, the county auditor shall certify to the department the following:

- (1) The claims allowed by the board of supervisors in that county;
- (2) The actual value, prior to the imposition of any applicable assessment limitations, of the parcels and property units for which credits were allowed in that county; and
- (3) The information applicable to the location of the parcels and property units.

b. Department process and methodology.

(1) Department of management information. The department shall obtain from the department of management tax district and applicable consolidated rates. The department shall calculate the credit using the estimated consolidated levy rates obtained from the department of management. The department shall modify the credit accordingly upon certification by the auditor of the actual consolidated levy rates.

(2) Initial amount of actual value. For each parcel or property unit certified by the county auditor, the department shall calculate, for each fiscal year, an initial amount of actual value to use for determining the amount of credit for each such parcel or property unit that provides the maximum possible credit according to the credit formula and limitations prescribed by Iowa Code section 426C.3(5). The department shall also calculate the initial amount of actual value so as to provide that the total dollar amount of credits against the taxes due and payable in the fiscal year equals 98 percent of the moneys in the business property tax credit fund following the deposit of the appropriation for the fiscal year, including any interest or earnings that have been credited to the fund.

(3) Credit amount. The amount of the credit shall be calculated as follows:

Step 1. Determine the lesser of the actual value calculated in paragraph 80.30(10) “a” and the initial value calculated in subparagraph 80.30(10) “b”(2).

Step 2. Multiply the amount determined in Step 1 by the difference between the assessment limitation percentage applicable to the parcel or property unit under Iowa Code section 441.21(5) and the assessment limitation applicable to residential property under Iowa Code section 441.21(4). For purposes of this calculation, such difference shall be stated as a percentage.

Step 3. Divide the product of Steps 1 and 2 by \$1000.

Step 4. Multiply the quotient obtained in Step 3 by the consolidated levy rate or average consolidated levy rate per \$1000 of taxable value applicable to the parcel or property unit for the fiscal year for which the credit is claimed as certified by the county auditor under Iowa Code section 426C.3(5).

(4) Allocation to parcels. The business property tax credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel’s total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

(5) Limitation on information. Notwithstanding the foregoing, the department’s calculations shall be based upon the certified information it has received by June 30 of each fiscal year. Any information, whether certified or uncertified, received after June 30 of each fiscal year will not be included in the department’s credit calculations for the applicable fiscal year.

This rule is intended to implement Iowa Code chapter 426C.

[ARC 1382C, IAB 3/19/14, effective 4/23/14; ARC 2508C, IAB 4/27/16, effective 6/1/16]

701—80.31(427) Broadband infrastructure.

80.31(1) Definitions. For purposes of this rule, the following definitions shall govern.

“*Broadband*” means a high-speed, high-capacity electronic transmission medium, including fixed wireless and mobile wireless mediums, that can carry data signals from independent network sources by establishing different bandwidth channels and that is commonly used to deliver Internet services to the public.

“*Broadband infrastructure*” means the physical infrastructure used for the transmission of data that provides broadband services. “Broadband infrastructure” does not include land, buildings, structures, improvements, or equipment not directly used in the transmission of data via broadband.

“*Certified project*” means the installation of broadband infrastructure certified by the office of the chief information officer to serve a targeted service area.

“*Date of commencement*” means the date first occurring after July 1, 2015, and before July 1, 2020, in which broadband infrastructure used in a certified project becomes property taxed as real property as determined by Iowa Code section 427A.1.

“*Date of completion*” means the date that the entire targeted service area receives broadband service delivered at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

“*Installation of the broadband infrastructure*” means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

“*Targeted service area*” means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block, within which no communications service provider offers or facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed as of June 22, 2015.

80.31(2) Exemption. An exemption from property tax shall be allowed for each certified project in the amount equal to 100 percent of the actual value added by installation of the broadband infrastructure in a targeted service area that facilitates broadband service for the public at or above 25 megabits per second of download speed and 3 megabits per second of upload speed, as certified by the office of the chief information officer. The exemption shall be allowed beginning January 1 of the assessment year in which an application for exemption is approved until the exemption is revoked or at the expiration of ten years, whichever occurs earlier.

80.31(3) Calculation of actual value added by installation of the broadband infrastructure. The actual value added by installation of the broadband infrastructure is the amount of increase in the actual assessed value of the property that is directly attributable to the installation of broadband infrastructure in a targeted service area for the assessment year in which the property receives the exemption. Changes in the value of the property which are attributable to general market fluctuations are not to be included in the calculation of the actual value added by installation of the broadband infrastructure. Installation of broadband infrastructure that is not part of a certified project is not eligible to receive the exemption.

Broadband infrastructure in general may be assessed locally or by the department of revenue. Broadband infrastructure that qualifies as telephone or telegraph property under Iowa Code chapter 433 is centrally assessed by the department of revenue. Broadband infrastructure that does not qualify as telephone or telegraph property under Iowa Code chapter 433 is locally assessed under Iowa Code chapter 441. The owner of the property must separately report property that is centrally assessed from property that is locally assessed.

a. Locally assessed property. The local assessor shall determine the actual value added by installation of broadband infrastructure using the methodologies required under Iowa Code section 441.21.

b. Centrally assessed property. The department of revenue shall determine the actual value added by installation of the broadband infrastructure by using the appropriate methodologies set forth in 701—Chapter 77.

The department shall calculate the actual value added by installation of the broadband infrastructure as part of the total unit value of the operating property of the company. The exemption attributable to the installation of the broadband infrastructure shall be applied to each unit before any other exemption or credit. In no case shall the taxable value of the property be reduced below zero. The department shall certify the exemption value per line mile for each company to the county auditor pursuant to Iowa Code section 433.8.

80.31(4) *Commencement and completion of project.* To be eligible for the exemption, the date of commencement of the installation of the broadband infrastructure must occur on or after July 1, 2015, and the date of completion of the installation of the broadband infrastructure must occur on or before July 1, 2020.

80.31(5) *Application for exemption.* The owner of broadband infrastructure shall file one application with the department of revenue. The department shall forward the application to the appropriate county boards of supervisors for approval or denial for broadband infrastructure associated with property subject to local assessment. The department shall retain the application for approval or denial for broadband infrastructure associated with property subject to central assessment.

a. Application deadline. The owner of the property shall file the application with the department of revenue by February 1 of the year in which the broadband infrastructure is first assessed for taxation or by February 1 of the following two assessment years. If approved, the exemption shall be allowed for ten years from January 1 of the assessment year in which the application is filed or until revoked without further application. However, at any time prior to the completion of the installation of the broadband infrastructure, an owner may submit a proposal to the department requesting that the owner be allowed to file an application for exemption by February 1 of any other assessment year following completion of the installation of broadband infrastructure. The department shall approve the proposal for property that is centrally assessed. The board of supervisors shall approve the proposal by resolution for property that is locally assessed. If approved, the exemption shall be allowed for ten years from January 1 of the assessment year in which the application is approved or until revoked without further application. If an exemption that was revoked is reinstated on appeal, the exemption shall remain in effect only for the remaining period of exemption. No property shall receive an exemption for the installation of broadband infrastructure for a period greater than ten years.

Neither the department nor the board of supervisors shall approve an application for exemption that is missing any of the requirements listed in this subrule. The department or the board of supervisors may consult with the office of the chief information officer in order to obtain additional information necessary to review an application for exemption.

b. Application requirements. The owner shall submit the application to the department of revenue. It is the responsibility of the owner to ensure that the application is complete and accurate. The application must be made on forms prescribed by the department. In addition, the application must contain the following information, certifications and documentation:

(1) The nature of the broadband infrastructure installation, including the number of new line miles installed within the jurisdiction of the assessing authority to which the owner is applying for exemption, and a description of the property and how it is directly related to delivering broadband services.

(2) The percentage of homes, farms, schools, and businesses in the targeted service area that will be provided access to broadband service.

(3) The actual cost of installing the broadband infrastructure under the project, if available. The application shall contain supporting documents demonstrating actual cost.

(4) Certification from the office of the chief information officer pursuant to Iowa Code section 8B.10 that the installation is being performed or was completed in a targeted service area and that it facilitates broadband service at or above 25 megabits per second of download speed and 3 megabits per second of upload speed.

(5) Certification by the company of the date of commencement and actual or estimated date of completion. If an application contains only an estimated date of completion, the owner must notify the department of the actual completion date once the certified project is completed. If the actual completion date occurs after July 1, 2020, the exemption may be revoked.

(6) A copy of any nonwireless broadband-related permit issued by a political subdivision, if applicable.

c. Special application requirements. If an owner submits a proposal to the department prior to the completion of the installation of broadband infrastructure requesting to file an application for exemption in any other assessment year following completion of the project, the owner must provide the following information and documentation in addition to those required under paragraph 80.31(5) “b.”

(1) The actual cost already incurred for installation of broadband infrastructure, if any, with supporting documentation demonstrating the actual cost.

(2) The estimated costs for project completion.

(3) The estimated date of project completion. Once the project has been completed, the owner must notify the department of the actual completion date. If the actual completion date occurs after July 1, 2020, the exemption may be revoked.

d. Approval or denial of application. All applications shall be submitted to the department of revenue. The department shall forward applications for property subject to local assessment to the board of supervisors of the county in which the exempt property is located. The department shall retain the applications for centrally assessed property. The department and the board of supervisors, as applicable, shall notify an applicant of approval or denial of an application for exemption by March 1 of the assessment year in which the application was submitted. The notification shall include a notification of the applicant’s right to appeal. The board of supervisors shall forward all approved applications and any necessary information regarding the applications to the appropriate local assessor by March 1 of the assessment year in which the application was submitted.

80.31(6) Revocation of exemption. The department or board of supervisors may revoke the exemption at any time after the exemption is granted if the department or board of supervisors determines that the property owner no longer provides the broadband service to a targeted service area at the speeds required under Iowa Code section 427.1(40). The property owner has the responsibility to provide the department, the board of supervisors or the office of the chief information officer the information required to substantiate that the broadband infrastructure meets the requirements of the exemption. The department or board of supervisors, as applicable, shall provide notice of revocation to the property owner. An owner may appeal the decision to revoke the exemption within 30 days of the issuance of the notice of revocation.

80.31(7) Appeals.

a. Appeal of denial of application for exemption. An applicant for the exemption under this rule whose application is denied may appeal the denial within 30 days of its issuance.

(1) Denial by board of supervisors. An applicant may appeal the denial of its application for exemption by the board of supervisors to the property assessment appeal board within 30 days of the issuance of the denial.

(2) Denial by the department of revenue. An applicant may appeal the denial of its application for exemption by the department of revenue to the director of revenue within 30 days of the issuance of the denial.

b. Appeal of revocation of exemption. An owner whose exemption is revoked may appeal the revocation within 30 days of its issuance.

(1) Revocation by board of supervisors. An owner may appeal the revocation of its exemption by the board of supervisors to the property assessment appeal board within 30 days of the issuance of the revocation.

(2) Revocation by the department of revenue. An owner may appeal the revocation of its exemption by the department of revenue to the director of revenue within 30 days of the issuance of the revocation.

c. Appeal of value of exemption. A property owner who is dissatisfied with the value of the owner’s exemption may appeal the value assigned by the local assessor using the protest procedures under Iowa Code section 441.37. A property owner who is dissatisfied with the value of the owner’s exemption may appeal the value assigned by the department using the appeal procedures under Iowa Code section 429.2.

This rule is intended to implement Iowa Code section 427.1(40).

[ARC 2549C, IAB 5/25/16, effective 6/29/16]

701—80.32 to 80.48 Reserved.

701—80.49(441) Commercial and industrial property tax replacement—county replacement claims. For each fiscal year beginning on or after July 1, 2014, the department of revenue shall pay to the county treasurer an amount equal to the amount of the commercial and industrial property tax replacement claims in the county. For fiscal years beginning on or after July 1, 2017, if an amount appropriated for a fiscal year is insufficient to pay all replacement claims, the director of revenue shall prorate the payment of replacement claims to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

80.49(1) For each taxing district, the commercial and industrial property tax replacement claim amount is determined by multiplying the amounts calculated in 80.49(1) “a” and “b” and dividing the resultant amount by \$1,000.

a. The difference between the assessed valuation of all commercial property and industrial property for the assessment year used to calculate taxes which are due and payable in the applicable fiscal year and the actual value of all commercial property and industrial property that is subject to assessment and taxation for the same assessment year; and

b. The tax levy rate per \$1,000 of assessed value of each taxing district for that fiscal year.

80.49(2) Reporting requirements.

a. On or before July 1 of each fiscal year beginning on or after July 1, 2014, the assessor shall report to the county auditor the total actual value of all commercial and industrial property in the county that is subject to assessment and taxation for the assessment year used to calculate the taxes due and payable in that fiscal year.

b. On or before September 1 of each fiscal year beginning on or after July 1, 2014, the county auditor shall, based upon the information in the report required to be provided in paragraph “a” of this subrule, prepare and submit a statement to the department of revenue which lists, for each taxing district in the county, the information required in 80.49(1).

c. The department shall pay the replacement amount to the county treasurer in two installments in September and March of each year.

d. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county.

[ARC 1332C, IAB 2/19/14, effective 3/26/14]

701—80.50(427,441) Responsibility of local assessors.

80.50(1) The assessor shall determine the taxable status of all property. If an application for exemption is required to be filed, the assessor shall consider the information contained in the application in determining the taxable status of the property. The assessor may also request from any property owner or claimant any additional information necessary to the determination of the taxable status of the property. For property subject to Iowa Code subsection 427.1(14), the assessor shall not base the determination of the taxable status of property solely on the statement of objects or purposes of the organization, institution, or society seeking an exemption. The use of the property rather than the objects or purposes of the organization, institution, or society shall be the controlling factor in determining the taxable status of property. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines*, 200 N.W.2d 509; *Northwest Community Hospital v. Board of Review of Des Moines*, 229 N.W.2d 738.)

80.50(2) In determining the taxable status of property, the assessor shall construe the appropriate exemption statute and these rules in a strict manner. If there exists any doubt as to the taxable status of property, the property shall be subject to taxation. The burden shall be upon the claimant to show that the exemption should be granted. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines*, 200 N.W.2d 509; *Southside Church of Christ of Des Moines v. Des Moines Board of Review*, 243 N.W.2d 650; *Aerie 1287, Fraternal Order of Eagles v. Holland*, 226 N.W.2d 22.)

80.50(3) If the assessor determines that all or part of a property is subject to taxation, the assessor shall notify the taxpayer by the issuance of an assessment roll as provided in Iowa Code sections 441.26

and 441.27. If the assessor determines that property has been erroneously exempted from taxation, the assessor shall revoke the exemption for the current assessment year but not for prior assessment years.

80.50(4) The assessor's determination of the taxable status of property may be appealed to the local board of review pursuant to Iowa Code section 441.37.

This rule is intended to implement Iowa Code chapter 427 and sections 441.17(11), 441.26, and 441.27.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.51(441) Responsibility of local boards of review.

80.51(1) If the board of review determines that property has been erroneously exempted from taxation, the board of review shall revoke the exemption for the current assessment year, but not for prior assessment years, and shall give notice to the taxpayer as provided in Iowa Code section 441.36.

80.51(2) If the board of review acts in response to a protest arising from an assessor's determination of the taxable status of property, the board of review shall notify the taxpayer of its disposition of the protest in accordance with the provisions of Iowa Code section 441.37.

This rule is intended to implement Iowa Code sections 441.35, 441.36, and 441.37.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.52(427) Responsibility of director of revenue. The director may revoke or modify an exemption on property if the exemption is found to have been erroneously granted by the local taxing officials. Any taxpayer or taxing district may request that the director revoke or modify an exemption, or the director may on the director's own determination revoke or modify an exemption. The director may revoke or modify an exemption for the tax year commencing in the tax year in which the request is made to the director or for the tax year commencing in the tax year in which the director's own motion is filed. The director shall hold a hearing on the appropriateness of the exemption prior to issuing an order for revocation or modification. The director's order to revoke or modify an exemption may be appealed in accordance with Iowa Code chapter 17A or in the district court of the county in which the property is located.

This rule is intended to implement Iowa Code section 427.1(16).

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.53(427) Application for exemption.

80.53(1) Each society or organization seeking an exemption under Iowa Code subsection 427.1(5), 427.1(8), 427.1(21), or 427.1(33) shall file with the appropriate assessor a statement containing the following information:

- a. The legal description of the property for which an exemption is requested.
- b. The use of all portions of the property, including the percentage of space not used for the appropriate objects of the society or organization and the percentage of time such space is so utilized.
- c. A financial statement showing the income derived and the expenses incurred in the operation of the property.
- d. The name of the organization seeking the exemption.
- e. If the exemption is sought under Iowa Code subsection 427.1(8), the appropriate objects of the society or organization.
- f. The book and page number on which is recorded the contract of purchase or the deed to the property and any lease by which the property is held.
- g. An oath that no persistent violations of the laws of the state of Iowa will be permitted or have been permitted on such property.
- h. The signature of the president or other responsible official of the society or organization showing that information contained in the claim has been verified under oath as correct.

80.53(2) The statement of objects and uses required by Iowa Code subsection 427.1(14) shall be filed only on forms prescribed by the director of revenue and made available by assessors.

80.53(3) Applications for exemptions required under Iowa Code subsection 427.1(14) must be filed with the assessor not later than February 1 of the year for which the exemption is requested.

80.53(4) If a properly completed application is not filed by February 1 of the assessment year for which the exemption would apply, no exemption shall be allowed against the property for that year (1964 O.A.G. 437).

This rule is intended to implement Iowa Code section 427.1, subsections 5, 8, 14, 19 to 24, 27, and 29 to 33.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.54(427) Partial exemptions. In the event a portion of property is determined to be subject to taxation and a portion of the property exempt from taxation, the taxable value of the property shall be an amount which bears the same relationship to the total value of the entire property as the area of the portion subject to taxation bears to the area of the entire property. If a portion of a structure is subject to taxation, a proportionate amount of the value assigned to the land upon which the structure is located shall also be subject to taxation.

This rule is intended to implement Iowa Code subsection 427.1(14).

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.55(427,441) Taxable status of property.

80.55(1) The status of property on July 1 of the fiscal year which commences during the assessment year determines eligibility of the property for exemption in situations where no claim is required to be filed to procure a tax exemption. If the property is in a taxable status on July 1, no exemption is allowable for that fiscal year. If the property is in an exempt status on July 1, no taxes are to be levied against the property during that fiscal year. Exceptions to this rule are as follows:

a. Land acquired by the state of Iowa or a political subdivision thereof after July 1 in connection with the establishment, improvement, or maintenance of a public road shall be taxable for that portion of the fiscal year in which the property was privately owned.

b. All current and delinquent tax liabilities are to be canceled and no future taxes levied against property acquired by the United States or its instrumentalities, regardless of the date of acquisition, unless the United States Congress has authorized the taxation of specific federally owned property (1980 O.A.G. 80-1-19). The following exceptions apply:

(1) Property owned by the Federal Housing Authority (FHA) and property owned by the Federal Land Bank Association are subject to taxation, and any tax liabilities existing at the time of the acquisition are not to be canceled (1982 O.A.G. 82-1-16; 12 USCS §2055).

(2) Existing tax liabilities against property acquired by the Small Business Administration are not to be canceled if the acquisition takes place after the date of levy. However, no taxes are to be levied if the acquisition takes place prior to the levy date or for subsequent fiscal years in which the Small Business Administration owns the property on July 1 (15 USCS §646).

c. Land owned by the state and leased by the department of corrections or the department of human services pursuant to Iowa Code section 904.302, 904.705, or 904.706 to an entity that is not exempt from property tax is subject to taxation for the term of the lease. This provision applies to leases entered into on or after July 1, 2003. The lessor shall file a copy of the lease with the county assessor of the county where the land is located.

80.55(2) The status of property during the fiscal year for which an exemption was claimed determines eligibility of the property for exemption in situations where a claim is required to be filed to procure a tax exemption. If the property is used for an appropriate purpose for which an exemption is allowable for all of the fiscal year for which the exemption is claimed, no taxes are to be levied against the property during that fiscal year. If the property for which an exemption has been claimed and received is used for an appropriate purpose for which an exemption is allowable for only a portion of the fiscal year for which the exemption is claimed, the taxes shall be prorated in accordance with the period of time the property was in a taxable status during the fiscal year.

This rule is intended to implement Iowa Code sections 427.1(1), 427.1(2), 427.2, 427.18, and 427.19.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.56(427) Abatement of taxes. The board of supervisors may abate the taxes levied against property acquired by gift or purchase if the property was acquired after the deadline for filing a claim for property tax exemption if the property would have been exempt under Iowa Code section 427.1, subsection 7, 8, or 9, if a timely claim had been filed.

This rule is intended to implement Iowa Code section 427.3.

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[◇] Two or more ARCs

CHAPTER 126
PROPERTY ASSESSMENT APPEAL BOARD

701—126.1(421,441) Applicability and definitions.

126.1(1) *Applicability and scope.* The rules set forth in this chapter govern the proceedings for all cases filed on or after January 1, 2015, in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review.

126.1(2) *Definitions.* For the purpose of these rules, the following definitions shall apply:

“*Appellant*” means the party filing the appeal with the property assessment appeal board.

“*Board*” means the property assessment appeal board as created by Iowa Code section 421.1A and governed by Iowa Code chapter 17A and section 441.37A.

“*Department*” means the Iowa department of revenue.

“*Electronic filing*” means the electronic transmission of a document to the electronic filing system together with the production and transmission of a notice of electronic filing.

“*Electronic filing system*” means the system established by the board for the filing of papers and service of the same to opposing parties.

“*Electronic record*” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

“*Electronic service*” means the electronic transmission of a notification to the registered users who are entitled to receive notice of the filing.

“*Local board of review*” means the board of review as defined by Iowa Code section 441.31.

“*Nonelectronic filing*” means a process by which a paper document or other nonelectronic item is filed with the board.

“*Notice of electronic filing*” means an e-mail notification generated by the electronic filing system when a document is electronically filed.

“*Party*” means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*PDF*” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“*Presiding officer*” means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the board.

“*Public access terminal*” means a computer located at the board’s office where the public may view, print, and electronically file documents.

“*Registered user*” means an individual who can electronically file documents and electronically view and download files through the use of a username and password.

“*Remote access*” means a registered user’s ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the board’s office.

“*Secretary*” means the secretary for the property assessment appeal board.

“*Signature*” means a registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or
3. “Nonelectronic signature” means a handwritten signature applied to an original document.

126.1(3) *Waivers.*

a. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

- (1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
- (2) The waiver would not prejudice the substantial rights of any person;
- (3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

b. Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.

c. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

126.1(4) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34). For good cause, the board may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the board shall afford all parties an opportunity to be heard or to file written arguments.

126.1(5) Judgment of the board. Nothing in this chapter should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.2(421,441) Appeal and certification.

126.2(1) Appeal and jurisdiction. The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by filing an appeal with the board. The appeal shall include a petition setting forth the basis of the appeal and the relief sought. The appeal shall be filed with the board within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. For an appeal filed through the electronic filing system to be timely, the appeal must be filed by 11:59 p.m. on the last day for filing.

b. The appeal may be filed through the board's electronic filing system, delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery.

126.2(2) Form of appeal. The appeal shall include:

- a. The appellant's name, mailing address, e-mail address, and telephone number;
- b. The address of the property being appealed and its parcel number;
- c. A short and plain statement of the claim;
- d. The relief sought; and
- e. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

126.2(3) Scope of review.

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. No new grounds in addition to those set out in the protest to the local board of review can be pleaded, but additional evidence to sustain those grounds may be introduced. The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof.

b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. The burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

c. The appeal is a contested case.

126.2(4) Notice to local board of review. The board shall serve, through the electronic filing system, a copy of the appellant's appeal to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is served on the local board of review.

126.2(5) Answer and certification by local board of review. Using the form provided by the board or a conforming document, the local board of review's attorney or representative shall file an answer and certification within 21 days after service of the notice of appeal. The answer and certification shall include a statement setting forth the local board of review's position on the appeal and include the following attachments:

1. The taxpayer's protest to the local board of review;
2. The final decision of the local board of review; and
3. The notice of assessment, if any.

126.2(6) Docketing. Appeals shall be assigned consecutive docket numbers. Electronic records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the board, as well as all filings made in the appeal.

126.2(7) Consolidation and severance. The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

126.2(8) Appearances. Any party may appear and be heard on its own behalf, or by its attorney or designated representative. Attorneys and designated representatives both shall file a notice of appearance with the board for each appeal. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.3(421,441) Nonelectronic service on parties and filing with the board.

126.3(1) Applicability. This rule applies to all nonelectronic filings made with the board by parties not voluntarily using the electronic filing system or in all other cases for which the board has not ordered the conversion of the case to an electronic file. Electronic filing and service of documents using the board's electronic filing system is governed by rule 701—126.4(421,441).

126.3(2) Service and filing of paper documents. After the appeal has been filed, all motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. Service on parties to the appeal. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing.

b. Filing with the board. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; or mailed by first-class mail, so long as there is proof of mailing. A registered user of the board's electronic filing system may electronically file documents with the board pursuant to rule 701—126.4(421,441).

c. Proof of mailing. Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).
(Date) (Signature)

126.3(3) *Board-generated documents.* The board will mail copies of all board-generated documents to any party not served by the board's electronic filing system.

126.3(4) *Conversion of filed paper documents.* The board will convert all filed paper documents to an electronic format viewable to registered users of the electronic filing system.

126.3(5) *Form of paper documents.* Each document delivered to the board must be printed on only one side and have no tabs, staples, or permanent clips. The document may be organized with paperclips, clamps, or another type of temporary fastener or be contained in a file folder.

126.3(6) *Return of copies by mail.* If a party requests that a document filed in paper form be returned by mail, the party must deliver to the board a self-addressed envelope, with proper postage, large enough to accommodate the returned document.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.4(421,441) Electronic filing system.

126.4(1) *Electronic filing and applicability.*

a. Electronic filing. The board will maintain an electronic filing system, which shall be the preferred method for filing documents with the board.

b. Applicability. This rule applies to electronic filing and service of documents using the board's electronic filing system. Nonelectronic filing and service are governed by rule 701—126.3(421,441).

(1) The board may order the conversion of any case to an electronic file. Upon such an order, all future filings must be made using the board's electronic filing system in compliance with this rule, unless a filing is subject to the exception in paragraph 126.4(1) "c."

(2) In all other cases, a party or parties to a proceeding may voluntarily choose to use the electronic filing system in compliance with this rule.

c. Exceptions. Any item that is not capable of electronic filing shall be filed in a nonelectronic format pursuant to rule 701—126.3(421,441).

126.4(2) *Registration.*

a. Registration required. Every individual who is filing documents or viewing or downloading documents filed in an appeal must register as a registered user of the electronic filing system.

b. How to register. To register, an individual must complete the registration process online at <https://efile-paab.iowa.gov/>, consent to the user agreement, and obtain a username and password for the electronic filing system.

c. Changing passwords. Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user must change the password immediately. The board may require password changes periodically.

d. Changes in a registered user's contact information. If a registered user's e-mail address, mailing address, or telephone number changes, the registered user must promptly make the necessary changes to the registered user's information contained in the electronic filing system. The registered user shall promptly give notice of changes in contact information to any nonregistered party in every active proceeding in which the registered user is a party.

e. Duties of a registered user. Each registered user shall ensure that the user's e-mail account information is current, that the account is monitored regularly, and that e-mail notices sent to the account are timely opened.

f. Canceling registration. Withdrawal from participation in the electronic filing system cancels the registered user's profile but does not authorize nonelectronic filing of documents and is not a withdrawal from a proceeding.

g. Use of username and password. A registered user is responsible for all documents filed with the registered user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

h. Username and password security. If a username or password is lost, misappropriated, misused, or compromised, the registered user of that username and password shall notify the board promptly.

i. Denial of access. The board may refuse to allow an individual to electronically file or download information in the electronic filing system due to misuse, fraud or other good cause.

126.4(3) Signatures.

a. Registered user. A username and password accompanied by a digitized, electronic, or nonelectronic signature serve as the registered user's signature on all electronically filed documents.

b. Documents requiring oaths, affirmations or verifications. Any document filed requiring a signature under oath or affirmation or with verification may be signed electronically or nonelectronically but shall be filed electronically.

c. Format. Any filing requiring a signature must be signed, with either a nonelectronic signature (actual signature scanned), an electronic signature (the symbol “/s/” or “/registered user's name/”), or a digitized signature (an inserted image of a handwritten signature).

d. Multiple signatures. By filing a document containing multiple signatures, the registered user confirms that the content of the document is acceptable to all persons signing the document and that all such persons consent to having their signatures appear on the document.

126.4(4) Format and redaction of electronic documents. All documents must be converted to a PDF format before they are filed in the electronic filing system. Prior to filing any document, the registered user shall ensure that the document is certified as confidential or that the confidential information is omitted or redacted.

126.4(5) Exhibits and other attachments. Any attachments to a filing, such as an exhibit, shall be uploaded and electronically attached to the filing. Each exhibit shall be filed as a separate PDF. Exhibits shall be labeled as required by paragraph 126.7(3) “d.”

126.4(6) Filing and service using electronic filing.

a. What constitutes filing. The electronic transmission of a document to the electronic filing system consistent with the procedures specified in these rules, together with the production and transmission of a notice of electronic filing, constitutes the filing of the document.

b. Electronic file stamp. Electronic documents are officially filed when affixed with an electronic file stamp. Filings so endorsed shall have the same force and effect as documents time-stamped in a nonelectronic manner.

c. E-mail or fax. The e-mailing or faxing of a document to the board will not generate a notice of electronic filing and does not constitute electronic filing of the document unless otherwise ordered by the board.

d. Public access terminal. The board shall maintain a public access terminal at the board's office.

e. Service of filings. When a document is electronically filed, the electronic filing system will produce and transmit a notice of electronic filing to all parties to the appeal who are registered users. The notice of electronic filing shall constitute service of the filing on registered users. No other service is required on registered users unless ordered by the board. The filing party is responsible for ensuring service, pursuant to paragraph 126.3(2) “a,” on any party that is not a registered user. Notices of electronic filing will continue to be sent to registered users appearing or intervening in a proceeding until the users have filed a withdrawal of appearance.

f. Proof of service of nonelectronic filings. Parties filing a document nonelectronically pursuant to paragraph 126.3(2) “c” and rule 701—126.3(421,441) shall electronically file a notice of nonelectronic filing along with proof of service.

g. Electronic filing and service of board-generated documents. All board-generated documents issued in an appeal governed by this chapter shall be electronically filed and served. The board shall only mail paper copies of documents as provided in subrule 126.3(3).

126.4(7) Filing by the board on behalf of a party.

a. Where the circumstances and administrative efficiency requires, board staff may file a motion on behalf of a party to an appeal pursuant to this subrule.

b. When a party to an appeal contacts board staff via telephone or other means and indicates the party's desire to file a motion or request specified in paragraph 126.4(7) “c,” board staff may file the request or motion in the electronic filing system on behalf of the party. The request or motion shall be consistent with the instructions and information provided by the party and shall only be filed with the

permission of the party. Board staff shall not file any motions or requests on behalf of a party if any opposing party requires nonelectronic service under subrule 126.3(2).

c. Only the following motions or requests may be filed by board staff on behalf of a party:

- (1) Motion for telephone hearing;
- (2) Motion to appear in person at hearing;
- (3) Motion for hearing;
- (4) Motion for continuance;
- (5) Motion to withdraw appeal.

d. Upon filing of the motion or request, board staff will provide a courtesy copy of the filing to the party.

[ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.5(421,441) Motions and settlements.

126.5(1) *Authority of board to issue procedural orders.* The board may issue preliminary orders regarding procedural matters.

126.5(2) *Motions.* No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the board and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. *Filing of motions.* Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board or presiding officer.

b. *Motions for summary judgment.*

(1) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this chapter or any other provision of law governing the procedure in contested cases.

(2) Motions for summary judgment must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 30 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 126.9(2).

c. *Motions to withdraw.* An appellant may withdraw the appeal prior to the hearing. Such a withdrawal of an appeal must be in writing and signed by the appellant or the appellant's designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board's granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

126.5(3) *Settlements.* Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed with the board. The board will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.6(421,441) Hearing scheduling and discovery plan.

126.6(1) *When required.* For appeals involving properties classified commercial, industrial, or multiresidential and assessed at \$2 million or more, the parties shall confer and file a hearing scheduling and discovery plan within 60 days of the notice provided in subrule 126.2(4). In any other appeal, the parties may jointly file a hearing scheduling and discovery plan or the board may, on its own motion, require parties to file a hearing scheduling and discovery plan. The dates established in a hearing scheduling and discovery plan under this rule shall supersede any dates set forth in any other rule in this chapter.

126.6(2) *Prehearing conference.* A party may request a prehearing conference to resolve any disputed issue pertaining to the hearing scheduling and discovery plan.

126.6(3) *Modification.* The parties may jointly agree to modify the plan. If one party seeks to modify the plan, the party must show good cause for the modification.

126.6(4) *Failure to comply.* A party that fails to comply with a plan shall be required to show good cause for failing to comply and that the other party is not substantially prejudiced. Failing to comply with a plan may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.7(421,441) Discovery and evidence.

126.7(1) *Discovery procedure.* The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings. The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; entry upon land for inspection and other purposes; and requests for admission. The time frames for discovery in specific Iowa Rules of Civil Procedure govern those specific procedures, unless lengthened or shortened by the board.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in an appeal. Any party taking a deposition in an appeal shall be responsible for any deposition costs. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in an appeal.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things; and entry upon land for inspection and other purposes in an appeal.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in an appeal. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in an appeal.

e. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to appeals before the board.

f. Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to an appeal.

g. Discovery shall be served on all parties to the appeal, but shall not be filed with the board. Parties shall file a notice with the board when a notice of deposition or a discovery request or response is served on another party. The notice filed with the board shall include the date, the manner of service, and the names and addresses of the persons served. Other discovery materials shall not be filed unless ordered by the presiding officer.

126.7(2) *Discovery motions.* Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer. Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 10 days of the filing of the motion unless the time is shortened by order of the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

126.7(3) Evidence.

a. Admissibility. The presiding officer shall rule on admissibility of evidence and may take official notice of facts in accordance with all applicable requirements of law. Evidence obtained in discovery may be used in the case proceeding if that evidence would otherwise be admissible in that proceeding.

b. Stipulations. Stipulation of facts by the parties is encouraged. The presiding officer may make a decision based on stipulated facts.

c. Scope of admissible evidence. Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision. Irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have filed a hearing scheduling and discovery plan under rule 701—126.6(421,441). Rebuttal evidence need not be exchanged or served on the opposing party prior to the hearing. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark each exhibit with consecutive numbers. The appellee shall mark each exhibit with consecutive letters. The local board of review's Exhibit A shall be the subject property's property record card or cost report.

e. Objections. Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

126.7(4) Subpoenas.*a. Issuance of subpoena for witness.*

(1) A subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

b. Issuance of subpoena for production of documents.

(1) A subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 14 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.

c. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.8(421,441) Hearings before the board.

126.8(1) *Prehearing conference.* An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

126.8(2) *Notice of hearing.* Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. If a hearing is requested, the board shall serve a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 126.8(3). The notice of hearing shall contain the following information:

- a.* A statement of the date, time, and place of the hearing;
- b.* A statement of legal authority and jurisdiction under which the hearing is to be held;
- c.* A reference to the particular sections of the statutes and rules involved;
- d.* That the parties may appear and present oral arguments;
- e.* That the parties may submit evidence and briefs;
- f.* That the hearing will be electronically recorded by the board;
- g.* That a party may obtain a certified court reporter for the hearing at the party's own expense;
- h.* That audiovisual aids and equipment are to be provided by the party intending to use them;
- i.* A statement that, upon submission of the appeal, the board will take the matter under advisement. An order will be issued to the parties; and
- j.* A compliance notice required by the Americans with Disabilities Act (ADA).

126.8(3) *Waiver of 30-day notice.* The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing. The waiver must be signed by the parties or their designated representatives and filed with the board. By waiving notice, the parties acknowledge they are ready to proceed with the hearing. The parties will be contacted when a hearing date is available but notice for said date may be less than 30 days. The parties will have the right to accept or reject the hearing date.

126.8(4) *Continuance.* Any hearing may be continued for "good cause." "Good cause" is equated to any cause not growing out of the fault or negligence of the movant, which satisfies the board that substantial justice will more nearly be obtained if the case is continued. A motion to continue the hearing shall be in writing and, except in exigent or other unusual circumstances, filed not later than 7 days before the hearing or immediately upon "the cause" becoming known. The motion must contain sufficient specific information or be supported by sufficient evidentiary materials or both to allow the board to determine whether there is "good cause" and whether the alleged cause grows out of the fault or negligence of the moving party. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

- a.* Prior continuances;
- b.* The interests of all parties;
- c.* The likelihood of informal settlement;
- d.* The existence of an emergency;
- e.* Any objection;
- f.* Any applicable time requirements;
- g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h.* The timeliness of the request; and
- i.* Other relevant factors, including the existence of a hearing scheduling and discovery plan.

126.8(5) *Telephone proceedings.* The board or presiding officer may conduct a telephone conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. Other proceedings, including contested case hearings, may be held by telephone. The board will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

126.8(6) *Hearing procedures.* A party to the appeal may request a hearing, or the appeal may proceed without a hearing. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

a. Authority of presiding officer. The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

b. Representation. Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative. A partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent.

c. Participation in hearing. The parties to the appeal have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

d. Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

e. Conduct of the hearing. The presiding officer shall conduct the hearing in the following manner:

(1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

(2) The parties shall be given an opportunity to present opening statements;

(3) The parties shall present their cases in the sequence determined by the presiding officer;

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. Witnesses may be sequestered during the hearing. The presiding officer may limit questioning in a manner consistent with law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

126.8(7) *Dismissal.* If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

126.8(8) *Transcript of hearing.* All hearings shall be electronically recorded. Any party may provide a certified court reporter at the party's own expense. Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.

126.8(9) *Members participating.* Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

126.8(10) *Disqualification of board member.* A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

a. A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;

- (4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- (5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;
- (6) Has a spouse or relative within the third degree of relationship who:
 - 1. Is a party to the appeal, or an officer, director or trustee of a party;
 - 2. Is a lawyer in the appeal;
 - 3. Is known to have an interest that could be substantially affected by the outcome of the appeal;
- or
- 4. Is likely to be a material witness in the appeal; or
- (7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.

b. Motion for disqualification.

(1) If a party asserts disqualification on any appropriate ground, including those listed in paragraph 126.8(10)“a,” the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

(2) If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and a stay as provided under 701—Chapter 7.

c. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.

d. Withdrawal. In a situation where a presiding officer or any other board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.9(421,441) Posthearing motions.

126.9(1) *Motion to reopen records.* The board or presiding officer, on the board’s or presiding officer’s own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision.

126.9(2) *Rehearing and reconsideration.*

a. Application for rehearing or reconsideration. Any party to a case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued.

b. Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that

includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

c. Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. Requirements for objections to applications for rehearing or reconsideration. An answer or objection to an application for rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board.

e. Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

[ARC 2108C, IAB 8/19/15, effective 9/23/15]

701—126.10(17A,441) Judicial review.

126.10(1) Appeals of board decisions. A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the board's final agency action is postmarked to the appellant or the final agency action is filed in the board's electronic filing system. Iowa Code chapter 17A applies to judicial review of the board's final decision. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

126.10(2) Stays of agency actions. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. In determining whether to grant a stay, the board or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5) "c." A stay may be vacated by the board upon application of any other party.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16]

701—126.11(22,421) Records access.

126.11(1) Location of record. A request for access to a record should be directed to the custodian.

126.11(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

126.11(3) Request for access. Requests for access to open records may be made in writing, in person, by e-mail, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, e-mail, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

126.11(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law.

126.11(5) Security of record. No person may, without permission from the secretary, search or remove any record from board files. Examination and copying of board records shall be supervised by the secretary. Records shall be protected from damage and disorganization.

126.11(6) Copying. A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

126.11(7) Fees.

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[ARC 2108C, IAB 8/19/15, effective 9/23/15]

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22.

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CHAPTER 6
SAFE AT HOME PROGRAM

721—6.1(9E) Definitions. For purposes of this chapter, the terms defined in this rule have the meanings given them.

“Address” means a residential street address, school address, or work address of an individual, as specified on the individual’s application to be a program participant.

“Applicant” means an adult, a parent or guardian acting on behalf of an eligible minor, or a guardian acting on behalf of an incapacitated person as defined in Iowa Code section 633.701.

“Designated address” means the mailing address assigned to a program participant by the secretary.

“Domestic abuse” means the same as defined in Iowa Code section 236.2.

“Domestic abuse assault” means the same as defined in Iowa Code section 708.2A.

“Eligible person” means a person who is all of the following:

1. A resident of this state.
2. An adult, a minor, or an incapacitated person as defined in Iowa Code section 633.701.
3. A victim of domestic abuse, domestic abuse assault, sexual abuse, stalking, or human trafficking as evidenced by the filing of a petition pursuant to Iowa Code section 236.3 or a criminal complaint or information pursuant to Iowa Code section 708.2A, 708.11, or 710A.2, or any violation contained in Iowa Code chapter 709.

For purposes of this definition, a person determined to be a sexually violent predator pursuant to Iowa Code section 229A.7 or a similar law of another state is not an eligible person.

“Human trafficking” means a crime described in Iowa Code section 710A.2.

“Mail” means first-class letters and flats delivered via the United States Postal Service, including priority, express, and certified mail, and excluding packages, parcels, periodicals, and catalogues, unless they are clearly identifiable as pharmaceuticals or clearly indicate that they are sent by a state or county government agency.

“Program” means the address confidentiality program established in Iowa Code chapter 9E.

“Program participant” means an individual certified by the secretary as a program participant under Iowa Code section 9E.3.

“Safe at home card” means the official participation card that is issued by the secretary of state to each program participant, that must state the program participant’s name, designated address, and certification expiration date, and that must include a space for the signature of the program participant.

“Safe at home program” means the program authorized by Iowa Code chapter 9E.

“Secretary” means the secretary of state.

“Sexual abuse” means a violation of any provision of Iowa Code chapter 709.

“Stalking” means the same as defined in Iowa Code section 708.11.

[ARC 2538C, IAB 5/25/16, effective 6/29/16]

721—6.2(9E) Failure to notify secretary of changes in information; cancellation. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.4. This rule describes the manner and process for cancellation of certification to the program.

6.2(1) Warning by the secretary.

a. The secretary must contact the program participant to request that the program participant comply with Iowa Code section 9E.4 if:

- (1) The program participant’s legal name or contact information changes, unless the program participant provides the secretary with prior written notice of the name change or contact information;
- (2) Mail forwarded by the secretary to the program participant’s address is returned as undeliverable by the United States Postal Service; or
- (3) The program participant does not accept service of process or is unavailable for delivery of service of process as described in Iowa Code section 9E.5(4).

b. The notice must state that if the program participant fails to comply within ten business days, the program participant's certification shall be canceled and the former program participant must return any safe at home cards in the participant's possession.

6.2(2) *Participant no longer eligible.* If the secretary learns that the program participant is no longer eligible, the secretary must provide the program participant with the opportunity to submit a withdrawal request in accordance with Iowa Code section 9E.3(3).

6.2(3) *Pending-cancellation status.* After the secretary has provided notice as required by subrule 6.2(1) or 6.2(2), the program participant is in pending-cancellation status. While the program participant is in this status, the secretary must hold the program participant's mail and must not forward it to the program participant. Pending-cancellation status ends after ten business days or upon the program participant's compliance with Iowa Code section 9E.4. This subrule does not prevent the secretary from forwarding correspondence marked "service of process" pursuant to Iowa Code section 9E.5(4).

6.2(4) *Cancellation.*

a. If the program participant's pending-cancellation status expires, the secretary shall cancel the certification of the program participant.

b. If a program participant or applicant provides false information when applying for certification renewal or on a change of information notice, the secretary shall cancel the certification of the program participant.

c. If a program participant relocates outside the state of Iowa, the secretary shall cancel the certification of the program participant.

6.2(5) *Cancellation of program certification without recourse.* The secretary shall cancel a program participant's certification if the program participant or applicant is determined to be a sexually violent predator pursuant to Iowa Code section 229A.7 or a similar law of another state.

6.2(6) *Return of mail.* If the certification of the program participant is canceled, mail addressed to the program participant must be returned to sender.

[ARC 2538C, IAB 5/25/16, effective 6/29/16]

721—6.3(9E) Renewal of certification; recertification. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.3(3). This rule describes the manner and process for renewal of program participant certification and for recertification.

6.3(1) *Renewal notification.* At least 30 days before the expiration of a program participant's certification, the secretary shall inform the program participant of the option of renewing certification in the safe at home program by sending an application to renew certification (renewal application) by first-class mail to the program participant's mailing address. The notice must also provide instructions to the program participant on what actions to take upon expiration of the certification, including the return of any safe at home cards and notification to public and private persons of the program participant's actual address, and that the designated address is no longer the address of the program participant. If the secretary has not received a renewal application within 10 days before the expiration of the program participant's certification, the secretary must mail a notice to the program participant reminding the program participant of the option to renew.

6.3(2) *Renewal process.* Along with the renewal application sent 30 days prior to expiration, the secretary may include a voter registration form so that the program participant may register to vote if the program participant has not already done so.

a. *Application.* The secretary shall renew the certification of a program participant when the secretary receives a complete renewal application from that program participant. The completed renewal application must contain the same information required in the certification application as specified in Iowa Code section 9E.3(1).

b. *Duties of applicant.* The program participant must provide all the information required by Iowa Code section 9E.3(3) and date and sign the renewal application.

c. *Completed renewal application to be signed.* The program participant must sign the completed renewal application and submit it and any additional materials in person, by mail, by facsimile, or by electronic mail to the secretary.

d. Missing information. If the completed renewal application does not meet the requirements of this subrule, the secretary shall contact the program participant or applicant to obtain the missing information.

e. Effective date. If submitted on or before the expiration date of the certification, a properly completed renewal application is effective on the day it is reviewed and certified by the secretary.

f. Duties of the secretary and program participants. The secretary must send a new safe at home card(s), which shall have an updated expiration date, within 10 business days of renewing a program participant's certification. The program participant must immediately sign the new safe at home card(s) upon receipt. The program participant must return any expired cards to the secretary by first-class mail so that they may be properly destroyed.

g. Penalties. A person who falsely attests in a renewal application or who knowingly provides false information upon making an application for certification renewal is subject to cancellation of program certification.

6.3(3) Recertification of former participants. Former program participants who have left the program through the withdrawal or cancellation process may reapply for certification in the program.

a. Application. The secretary may recertify a former program participant when the secretary receives an application from that former program participant. The application for recertification must contain the same information required in the certification application as specified in Iowa Code section 9E.3(1).

b. Duties of applicant. The applicant must provide all the information required by Iowa Code section 9E.3(1) and date and sign the application.

c. Completed application to be signed. The applicant must sign the completed application and submit it and any additional materials in person, by mail, by facsimile, or by electronic mail to the secretary.

d. Missing information. If the completed application does not meet the requirements of this subrule, the secretary shall contact the program participant or applicant to obtain the missing information.

e. Explanation statement. An applicant whose program participation was canceled under rule 721—6.2(9E) may be required to submit an explanation of the action that resulted in cancellation.

f. Effective date. A properly completed application is effective on the day it is reviewed and certified by the secretary.

g. Duties of the secretary and program participants. The secretary must send a new safe at home card(s), which shall have current expiration date and information, within 10 business days of recertifying a former program participant. The program participant must immediately sign the safe at home card(s) upon receipt.

h. Penalties. A person who falsely attests in an application or who knowingly provides false information upon making an application for recertification is subject to denial or cancellation of program certification.

[ARC 2538C, IAB 5/25/16, effective 6/29/16]

721—6.4(9E) Cancellation of voter registration in the statewide voter registration database. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.6(1). This rule describes the manner and process for canceling a program participant's voter registration in the statewide voter registration database.

6.4(1) Voluntary cancellation of voter registration. The secretary shall cancel the program participant's voter registration record in the statewide voter registration database upon the program participant's written and signed request to the secretary to register to vote through the program.

6.4(2) Exclusion of program participant information in the statewide voter registration system. In accordance with Iowa Code section 9E.6(1), the name, address, and telephone number of a program participant shall not be listed in the statewide voter registration system even if the program participant does not submit a request to the secretary to register to vote through the program.

[ARC 2538C, IAB 5/25/16, effective 6/29/16]

721—6.5(9E) Change of voter registration through the program. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.6(1). This rule describes the manner and process for program participant change of voter registration through the program.

6.5(1) *Change of address within the county of the preregistered address.* If the program participant relocates within the county in which the program participant has already registered with the program, the program participant must submit an updated voter registration form to the secretary.

6.5(2) *Change of address to an Iowa county outside the county of the preregistered address.*

a. If the program participant relocates outside the county in which the program participant has already registered with the program, the program participant must submit an updated voter registration form to the secretary.

b. The secretary shall make the necessary changes in the registration records without any actions by the participant.

6.5(3) *Change of name.* If the program participant changes the program participant's name but does not move outside the county in which the program participant is registered, the secretary shall update the program participant's previous registration to reflect this change in accordance with Iowa Code section 48A.27(2) "a"(1). The participant shall submit a signed, written notice to the secretary in person, by mail, by facsimile, or by electronic mail. For purposes of this subrule, a change of information form shall constitute a signed, written notice.

6.5(4) *Other changes.* If the program participant's circumstances change so as to render inaccurate the information previously submitted with the program participant's voter registration, the program participant shall contact the secretary to update the voter registration information. A program participant may request changes to the program participant's voter registration record at any time by submitting a signed, written notice to the secretary in person, by mail, by facsimile, or by electronic mail in accordance with Iowa Code section 48A.27(2) "a"(1).

[ARC 2538C, IAB 5/25/16, effective 6/29/16]

721—6.6(9E) Cancellation of absentee ballot voting through the program. This rule facilitates the administration of the safe at home program in accordance with Iowa Code section 9E.6(2). This rule describes the manner and process for program participant cancellation of absentee ballot voting through the program.

6.6(1) *Voluntary cancellation of voter registration.* The secretary shall cancel the program participant's voter registration and absentee ballot application with the program upon the written and signed request of the participant.

6.6(2) *Involuntary cancellation of voter registration.* The secretary shall cancel the program participant's voter registration and absentee ballot application with the program upon one of the following:

a. The death of the program participant, as evidenced in accordance with the standards set forth in Iowa Code section 48A.30.

b. Notification of the program participant's relocation to another county.

c. The receipt of notice from the clerk of the district court, the United States Attorney, or the state registrar that the program participant has been convicted of a felony as defined in Iowa Code section 701.7 or convicted of an offense classified as a felony under federal law in accordance with the procedure set forth in Iowa Code section 48A.30(1) "d."

d. The receipt of notice from the district court or the state registrar that the program participant has been declared a person who is incompetent to vote under state law.

e. The inactivity of the program participant's voter registration record pursuant to Iowa Code section 48A.29 for two successive general elections.

f. The withdrawal of a program participant from the program.

g. The cancellation of a program participant's certification in the program.

6.6(3) *Cancellation of active absentee ballots issued through the program.*

a. The secretary shall notify the local county auditor, and the local county auditor shall have the authority to challenge or cancel the active absentee ballot issued through the safe at home program if one of the following occur:

(1) The death of the program participant, as evidenced in accordance with the standards set forth in Iowa Code section 48A.30.

(2) Notification of the program participant's relocation to another county.

(3) The receipt of notice from the clerk of the district court, the United States Attorney, or the state registrar that the program participant has been convicted of a felony as defined in Iowa Code section 701.7 or convicted of an offense classified as a felony under federal law in accordance with the procedure set forth in Iowa Code section 48A.30(1) "d."

(4) The receipt of notice from the district court or the state registrar that the program participant has been declared a person who is incompetent to vote under state law.

(5) The withdrawal of a program participant from the program.

(6) The cancellation of a program participant's certification in the program.

b. The local county auditor shall have the authority to challenge or cancel the active absentee ballot issued through the safe at home program.

6.6(4) *Confirmation of voter registration cancellation.* The secretary shall confirm cancellation of absentee ballot voting within ten business days by sending notice of cancellation to the program participant's mailing address.

[ARC 2538C, IAB 5/25/16, effective 6/29/16]

These rules are intended to implement Iowa Code chapter 9E.

[Filed ARC 2538C (Notice ARC 2416C, IAB 2/17/16), IAB 5/25/16, effective 6/29/16]